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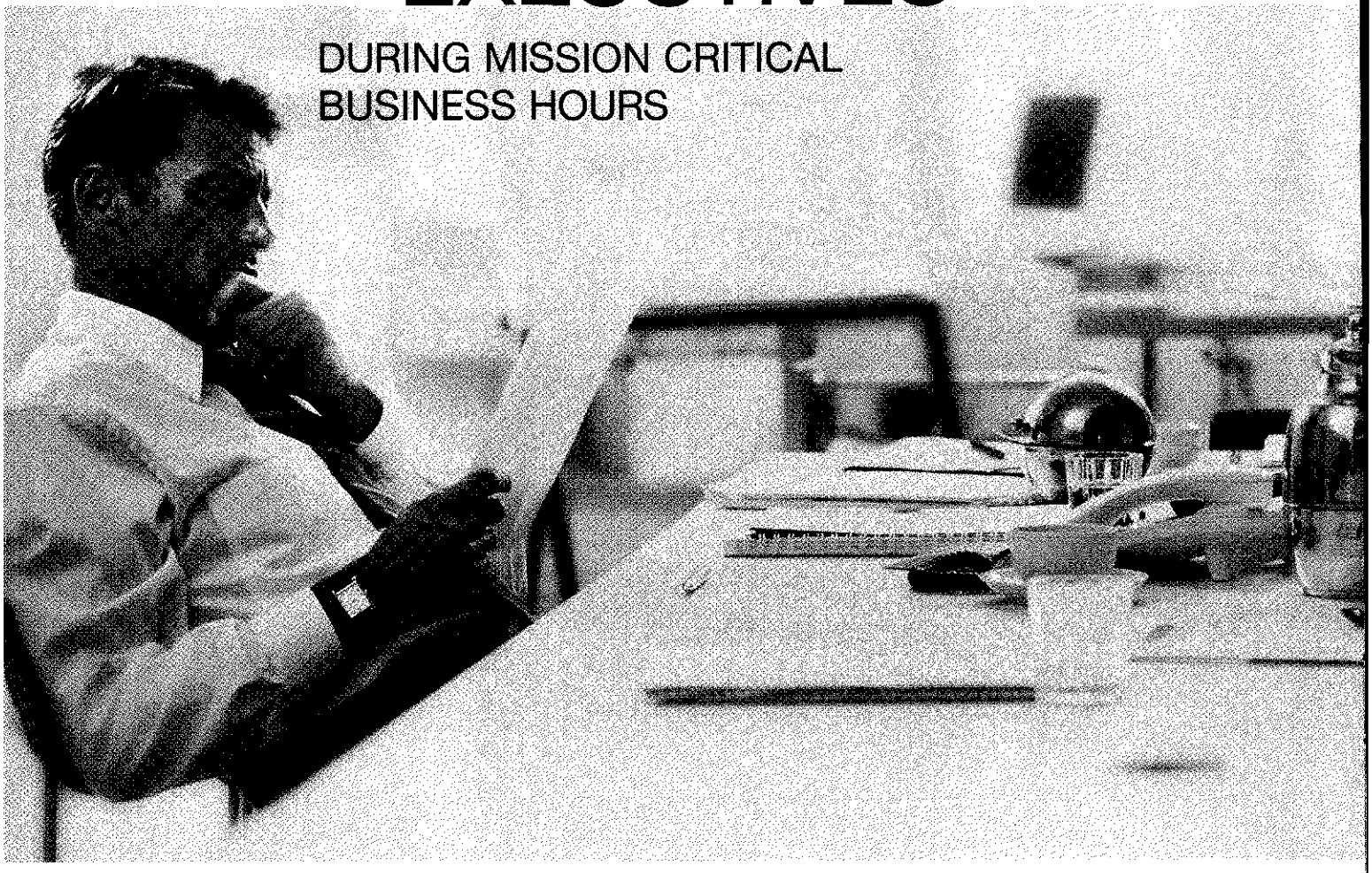

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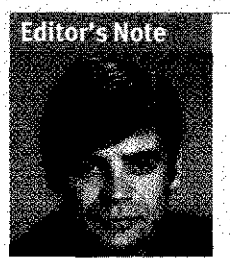

IF THEY SURVIVE...will we?

That was the spooky come-on for *The Boys From Brazil*, the popular 1978 movie that served as many people's introduction to cloning and other forms of genetic manipulation. What a downbeat primer: Based on the Ira Levin novel, the plot revolved around Josef Mengele, then the most notorious at-large war criminal from World War II, and an attempt to create a Fourth Reich by genetically engineering a new Hitler.

The year 1978 showcased another biologically loaded debut, one that momentarily inspired far more fear and panic than *The Boys From Brazil*: the birth of Louise Brown as the world's first "test-tube baby." "Is it dehumanizing," asked *Time*, "a step that is to be condemned because it puts the moment of creation outside the body into a mechanical environment?"

A quarter of a century later, *The Boys From Brazil* surfaces occasionally on late-night TV, an over-the-top relic of apocalyptic '70s culture. In vitro fertilization, the process through which Louise Brown was conceived, is common enough that it no longer merits much discussion, let alone societal anxiety.

But as human cloning and a host of other related technologies edge closer to becoming reality, arguments over their desirability, implications, and legal status are only getting started. This is serious stuff: Not only do these procedures hold forth the greatest promise for the improvement of human life in the coming decades, but they are on the verge of being prohibited, at least in the United States.

Last year the House of Representatives passed a comprehensive ban on human cloning, including therapeutic cloning aimed at creating embryonic stem cells that might one day help cure Alzheimer's disease, diabetes, and many other illnesses. As I write this, President George W. Bush is pushing the Senate to pass the ban, which he will happily sign into law.

This is the vital backdrop for "The Clone Wars," a debate between Gregory Stock, author of *Redesigning Humans: Our Inevitable Genetic Future*, and Francis Fukuyama, author of *Our Posthuman Future: Consequences of the Biotechnology Revolution* (page 34). In those books—and in **reason**'s pages—they provide the most lucid cases for and against cloning and other biological manipulations. To be upfront about it, I'm in Stock's camp on this issue, believing not only that such technologies will help minimize human suffering but that they are morally defensible tools which will someday allow individuals greater control over their bodies and their lives.

"Biological enhancement will lead us into unexpected realms, eventually challenging our basic ideas about what it means to be human," writes Stock in the first chapter of his book. "Some imagine that we will see the perils, come to our senses, and turn away from such possibilities. But...to forgo the powerful technologies genomics and molecular biology are bringing would be as out of character for humanity as it would be to use them without concern for the dangers they pose. We will do both. The question is no longer whether we will manipulate embryos, but when, where, and how."

Stock is doubtless correct about the long run. In fact, as he underscores, we are *already* manipulating embryos. As with in vitro fertilization, once the benefits of the new technologies are realized, they will be embraced, or at least tolerated, as tools for individual empowerment. But legislation—and lingering fears borne out of fantastic scenarios such as *The Boys From Brazil*—will have a lot to say about when, where, and how. If *they* survive, it will take that much longer for our future to happen.

—Nick Gillespie

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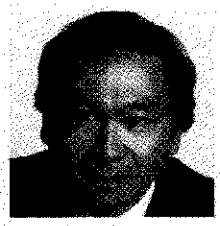
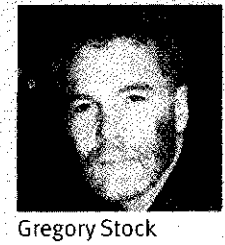


Francis Fukuyama



Gregory Stock

Loren Lomasky

Cynthia Grenier

Who should control the biotech revolution, the individual or the state? Johns Hopkins' FRANCIS FUKUYAMA and UCLA's GREGORY STOCK debate the question in "The Clone Wars" (page 34). Fukuyama first engaged the subject when writing a retrospective on his 1992 bestseller *The End of History and the Last Man*. "The one irrefutable criticism of my argument was that you couldn't have an end of history without an end of science. So I started to think about how biotech could change our assumptions about liberal democracy." The result is the new *Our Posthuman Future: Consequences of the Biotechnology Revolution*. Stock, author of *Redesigning Humans: Our Inevitable Genetic Future*, says he's long been interested in studying human evolution. "Usually we look toward the past, to explain how we got where we are. To me, it's more interesting to ask where will we go and how technology will change our future."

"In a less free society they'd have locked me up by now," admits Contributing Editor LOREN LOMASKY, who defends liberalism's core value of toleration in this issue ("Tolerating Freedom," page 56). "I've been taking on opponents of liberalism for 20 years now. And it was only *after* I began to do this that the Berlin Wall came down," deadpans the Bowling Green State University philosophy professor and author of *Persons, Rights, and the Moral Community* (Oxford). What tests Lomasky's tolerance? "Bright yellow mustard. If I had my way, I would outlaw it."

In "Che's Secret Diaries," veteran cultural commentator CYNTHIA GRENIER considers Ernesto Guevara's incredible resilience as a revolutionary icon (page 55). She's sure she knows at least part of the answer: "He just happened to be better looking than all the others." Currently a resident of Washington, D.C., Grenier has lived in Paris, New York, and Los Angeles. Her career highlights include being a book editor, a film and theater critic, a *New York Times* reporter, and a vice president at United Artists, where she secured the American release of the pathbreaking gay farce *La Cage aux Folles*.

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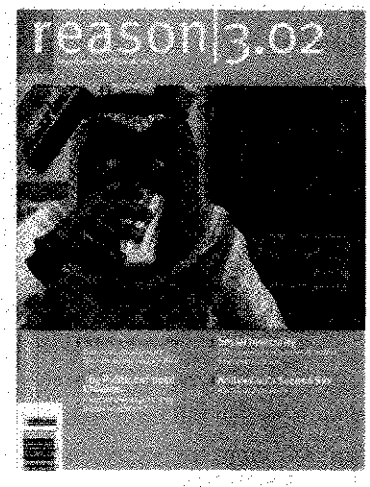

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Wither Iraqi Sanctions?

I was impressed with Matt Welch's "The Politics of Dead Children" (March). It convincingly demonstrated the real impact of sanctions and deserves to set the tone for all coverage going forward. However, it also left me with some unanswered questions. For instance, I am not persuaded that we should lift sanctions on Iraq.

Don't get me wrong. I am glad we are "engaging" China. I think we should lift the sanctions on Fidel Castro too, and let markets render him irrelevant. But is it fair to argue, as Welch seems to, that sanctions never work?

Those who advocated sanctions on South Africa were apparently vindicated when the apartheid regime was overturned. If I had been involved in the debate, I probably would have argued then that we should "engage" South Africa (as **reason** did), but I'm a results-oriented guy. If I'm honest, I have to acknowledge that sanctions seemed to work in that case.

But there's another point to consider. What impact—if any—do sanctions have on Saddam Hussein's ability to build weapons of mass destruction and threaten America? If sanctions kill Iraqi babies but save American ones, I'll bet most Americans would accept the trade. It's a cruel but indisputable truth. Ask just about any American. They'd say: Better their dead babies than ours.

Of course, one could argue that there is no connection between sanctions and military affairs. In fact, you could argue that sanctions make rogue nations more hostile and more dangerous. But observe what happened when the Soviets realized that their "self-imposed economic sanctions"—which is one way of looking at the autarkic economic system they had created—were undermining their ability to keep up with America's technological sophistication. They allowed the Berlin Wall to fall.

Yes, the embargo has certainly been a propaganda bonanza for Saddam and America's enemies. But has it truly been "ineffective"? I am not convinced.

Britton Manasco
Austin, TX

Matt Welch writes, "There have been no weapons inspectors in Iraq since 1998. As a result it is exceptionally difficult to know with precision what nuclear or biological weapons Saddam has on hand or in development."

The International Atomic Energy Agency, which polices the Non-Proliferation Treaty, has just returned from its annual inspection of Iraq. It said there has been no change in the status of the fissile material Iraq had acquired for use in its nuclear power plant. There has been no evidence Iraq has acquired additional amounts. If it had a nuclear weapons program, it would be identifiable by spy satellite, as it requires enormous amounts of electrical power to run the cyclotrons.

Welch is right about chemical-biological warfare, but as Rumsfeld himself acknowledges, chem-bio can be produced in such small, undetectable places that it was always foolish to think U.N. inspectors could find them if they did exist. All weapons "found" by the United Nations were identified by November 1991, and the Iraqi government took the inspectors to the places where they had been destroyed.

In any case, the number of Iraqi civilians who have died since the Gulf War, under 5 or over 5 years of age, is enormous. U.S. policy intends to make the Iraqi people suffer so much that they overthrow Saddam Hussein. Our

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political establishment and the major media that do its bidding have known and supported this evil policy all along. There's your story, but don't bother trying to get it published where anyone will see it.

The exact number of dead children is unimportant when set against Madeleine Albright's stupid remark about it being worth the deaths of 500,000 children to contain Saddam. Since that went into global circulation, it has been a waste of time for reporters to fuss about the exact number. The reporting on Iraq by our press corps has been scandalous, and 9/11 is the price we have paid. So far.

Jude Wanniski
Polyconomics.com

First, it should be noted that I voted for George Bush, the Elder—once. I also voted for his son. As a veteran of five years of service with the 1st Cavalry Division, the 7th Infantry Division, and the XVIII Airborne Corps, I am no peacenik. That said, the establishment's manic efforts to whip up war hysteria are nauseating, and Welch's attempt to minimize the impact of U.S. policy on Iraqi civilians is disingenuous.

The fact is that George Herbert Walker Bush manufactured Desert Storm in a doomed attempt to rescue his administration from the political consequences of his tax flip-flop. Bush failed. Now his son is attempting to impose a state of permanent war on America, all the while laying down the foundation of a police state.

Whether American policies have led to the deaths of 100,000 Iraqi children or 600,000 is immaterial. It is time for Imperial America to withdraw its legions and dismantle its empire.

Frank Brady
Via e-mail

Who deserves to be dealt with most harshly: criminals who murder hundreds of thousands of children, people who absolve the criminals of any wrongdoing and applaud them for their actions, or people who exaggerate the number of victims?

Judging from Matt Welch's piece, his answer would be number three. He refers to the "anti-sanctions rabble" as "loonies" who have made "hysterical" claims about the impact of the sanctions.

As for the people who aggressively advocate policies that kill hundreds of thousands of innocent people, he writes, "Sanctions proponents, if they are not careful, run the risk of aping the foolish debate tactics of the critics they condemn." Boy, that's telling them. Too bad he used up all his venom on the "rabble."

To "loonies" like me a much more appropriate statement would be, "Sanctions proponents are accomplices to mass murder." That is what we would say of people who advocated policies that killed hundreds of thousands of American children. Such policies could be justified only if an overwhelmingly strong case was made that more lives would be lost if they weren't implemented and that no other options were available. If such a case exists Welch certainly hasn't presented it, nor has anyone else.

Welch quibbles that the deaths are not due just to the sanctions but also to the impact of the war. Yet who bombed Iraq back to the Stone Age? Weren't most of the "rabble" he ridicules opposing that war while mainstream pundits were raving about smart bombs? Moreover, sanctions opponents have pointed out that people are dying due to both the sanctions and the destruction of the Gulf War.

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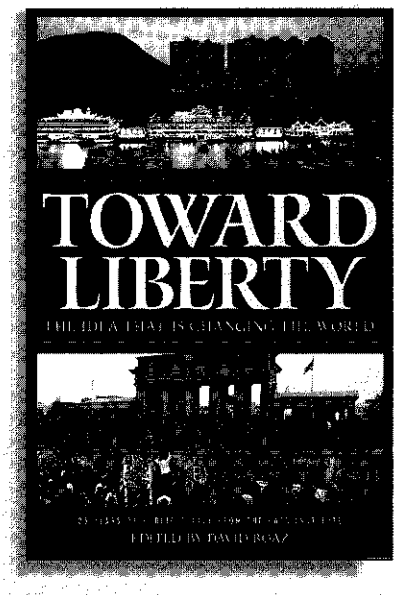

After the tyrannies and central planning of the 20th century, true liberalism is making a comeback. Everywhere that governments will allow it, people are choosing open markets, open societies, and responsibility for their own lives. In these essays Milton Friedman, F. A. Hayek, Alan Greenspan, Nadine Strossen, Helen Suzman, Walter Williams, P. J. O'Rourke, and 40 more advocates of liberty examine the fall of statism and the spread of free markets and human rights.

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mate of the number of victims doesn't help anyone if people are too cowardly to call murderers what they are. I hope Welch will one day find the courage to do so. Until then he won't be of much use at all to innocent Iraqis. They are much better served by the "rabble."

Joe Emersberger
Via e-mail

Matt Welch's "The Politics of Dead Children" compelled me to write. I just wanted to compliment him on a nice job. I am used to the attitude that the truth need not get in the way of a good political position, so I really appreciate that he's taken time to defuse the inaccuracies, exaggerations, and ignorance of people unwilling to sift through the information that's there and make an assessment that recognizes both the facts and the accompanying uncertainty that is inherent in figures such as the ones Welch describes.

I hold a master's degree in critical and creative thinking. I'm embarrassed but not surprised that Robert Jensen, the professor who says he teaches the subject, is a zealous practitioner of "weak-sense" critical thinking. That's the practice of finding evidence to support already-formed opinions and ideas, as opposed to collecting information that might either confirm or not confirm an idea or opinion held as a hypothesis. My experience is that the former practice predominates.

Brian Keegan
Attleboro, MA

Matt Welch's article as a whole was well reasoned and well presented. But I didn't see how his numbers added up.

The highest total mortality rate he quotes is 130.6 per 100,000 births. This is roughly 1 in 1,000 mortality. In order to get 100,000 children dead, then, one would need 100 million children to be born.

The entire population of Iraq is estimated at 24 million, which would imply a birth rate of just over a quarter of a million persons per year (very roughly). In seven years I would expect roughly 2 million or so children to be born, and 2,000 or so of these children to die (from all causes), using the mortality rate listed above. Am I miscalculating, or is there a mistake?

Dr. Thomas Cunningham
Pasadena, CA

Matt Welch replies: Thanks to Thomas Cunningham for correctly pointing out my embarrassing error in presenting UNICEF's estimated under-5 mortality rate for 1994–1998 in the Saddam Hussein–controlled regions of Iraq. It was indeed 130.6 per 1,000 births, not 100,000.

Joe Emersberger, Jude Wanniski, and Frank Brady would have preferred I write a different article, preferably one focused on condemning U.S. policy. I respect their disappointment and would like only to suggest that the article they were hoping for has been written thousands of times before, including in **reason**.

That doesn't mean those articles were wrong (though many passed along falsehoods), just that I chose to write about a less-covered aspect of the story: how and why partisans and the press bend and invent facts to support their political aims, thereby making it harder for the rest of us to gather the basic information required to form an intelligent opinion.

Also, I cannot agree with Emersberger's contention that "the most accurate and careful estimate of the number of victims doesn't help," or Wanniski's that "the exact number of dead children is unimportant," or Brady's that "whether American policies have led to the deaths of 100,000 Iraqi children or 600,000 is immaterial." It is my belief that truth actually matters, and distortion of truth—whether by the U.S. government or its critics—is inevitably counter-productive.

I think Britton Manasco is right to suggest that sanctions sometimes *might* work, and that Saddam Hussein's military buildup should not be ignored. I described the current sanctions regime as "ineffective" precisely because the crucial weapons inspection component has been absent since 1998, while the Iraqi population continues to suffer (though responsibility for that suffering under the oil-for-food regime—which provides more value per capita than perhaps any other single-country humanitarian program in the world—is probably now more due to the Iraqi government than to the sanctions).

It is hard to see what policy goals the current U.N. setup advances, unless there is a desire to inflict general degradation on a population and its leaders, and to give Saddam Hussein and his undemocratic neighbors a propaganda tool of uncommon resonance.

CORRECTION: In "Speaking Lies to Power" (May), Ralph Nader's book *Crashing the Party* was misidentified.

reason News

We are pleased to announce that Assistant Editor Sara Rimensnyder has been named the top winner in the 2001 Felix Morley Journalism Competition, sponsored by the Institute for Humane Studies. Congratulations, Sara!

Read about the award and all the winners at www.theihs.org/tab1/m2001-2002winners.htm.

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X-Ray specs; political spying; Kansas gender bender; medicated until proven guilty; ethnic engineering; government wages; little white Indians; and an immigration advocate

Tyrannical television?

Laff Riot

Sara Rimensnyder

THE NEW AIRPORT security regime has a friend in ABC. The TV network threatened in March to ax a planned episode of *The Drew Carey Show*. In it, the show's two resident idiots—who also happen to be Drew's best friends—take jobs as airport checkers, and find that they fit right in.

In a request more hilarious than the show itself, the network asked that at least one security worker be portrayed as "competent," reports the *Los Angeles Times*. Drew Carey's producers ultimately complied, and a revised version broadcast in late March.

The *Times* quoted a "network source" as saying that it would be irresponsible to portray all the security workers as incompetent. Never mind that this is a TV show which, at its most serious, has featured a 300-pound woman in clown make-up wearing vibrating underwear. And as Carey himself told the *Times*, "If you can't satirize authority figures, what's the point?"

ABC is hopefully underestimating its advertisers' sense of humor. In any case, their concern appears misplaced given a statistic that should pose a much greater threat to advertising: The network's 23-percent audience loss over the season to date.

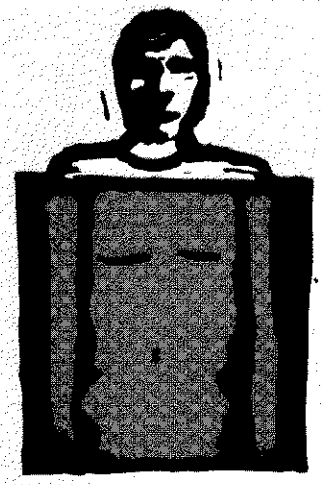
But fear not. ABC has a plan for boosting ratings (besides mucking with its shows' scripts). A network spokesman told *The Hollywood Reporter* that the overall message to ad buyers now will be "how we lost our way," and that the station will be featuring more family sitcoms and fanciful dramas. His example of the golden-age television that the network will seek to revisit? *Fantasy Island*.

Secure skin show

X-Ray Specs

Christopher Bogoyevac

IF THE FOLKS at ABC would loosen up, they might find some funny fodder in the latest in airport security: a prototype next-generation scanning system that works by looking through a person's clothes. The machine, dubbed a "virtual strip-search" by the American Civil Liberties Union, is being tested at Orlando



International Airport. The Rapiscan Secure 1000 debuted in March and uses low-energy X-rays to see through clothing in order to reveal hidden weapons. In doing so it effectively disrobes its subject, producing a computer image that leaves very little to the imagination.

Rapiscan project manager Bryan Allman told the Associated Press, "Everybody has to learn that the world has changed since September 11, and the world needs a much more thorough type of screening." But ACLU associate director Barry Steinhardt believes the scan goes too far. "We don't need to use this

25 years ago in reason

"There is a tendency among the ideological to believe not only that they possess the Truth in ideological matters but that even the least important matters must conform to their axioms."

—Dennis Turner, "Investment or Ideology?"

"We tossed a twin-sized mattress into the trunk of our '64 Plymouth and slept very snugly there. We even found that if the wind became too vigorous we could be nicely protected by pulling the trunk lid down so it was only open a crack."

—Don Stephens, "Survival Preparedness a Step at a Time"

"In March the FDA announced a ban on saccharin, effective July 1, based on tests in which rats fed the equivalent of 1,000 cans of soda per day developed bladder cancer."

—Robert Poole Jr., "Saccharin and Human Liberty"

"Lowell Ponte, in his book *The Cooling*, carefully analyzes all the climatic evidence and theories and concludes that the world is definitely cooling rapidly, with the chances of another ice age rather high."

—John Dublin, "You Can Profit from the Carter Era"

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technology," he told CNN. "In fact, we don't even need to test it. We know it works, it works too well. There are other technologies...which will allow us to detect, for example, the presence of plastic explosives. We don't oppose those."

Jane Garvey, head of the Federal Aviation Administration, has also expressed discomfort with the technology, stating that it "raises tremendous privacy issues." Garvey said she doubts the Rapiscan will be approved for national use, except perhaps for screening baggage. Testing at Orlando International continues, however. Officials there plan to employ the scan only when a passenger shows an "anomaly," and for the time being, the station is purely voluntary.

Political spying

Policing Dissent

Jesse Walker

WHEN THE STANDUP comic Lenny Bruce started getting busted for obscenity, he worked his court transcripts and police reports into his act, reading them aloud in lieu of telling jokes. There may come a day when Denver dissidents find similar fun in the political dossiers gathered by local police and leaked recently to the American Civil Liberties Union. Members of the American Friends Service Committee, for example, may someday chuckle over the file that declared the Quaker organization a "criminal extremist group." For now, though, they're just angry.

According to local authorities, the spies simply misinterpreted the scope of the city's criminal intelligence, leading —in the words of C.L. Harmer of the Denver Department of Safety—to "an overly broad interpretation of a sound policy." Police keep files on criminals and those who interact with them all the time, Harmer notes. In this case, officers extended their surveillance to activities that were not criminal at all, even though department guidelines state that police "shall not collect or maintain criminal intelligence information about the political, religious, or social views, associations, or activities of any individual...unless such information directly relates to criminal conduct or activity."

That plain language has led several activists to doubt the city's story. "I've heard that policy read aloud," comments Maxine Lankford of Denver CopWatch. "What happened wasn't a 'misinterpretation'—it was deliberate disobedience."

The police currently hold about 3,200 files on individuals and 208 on groups, some of them genuinely criminal and some of them peaceful dissidents. The spies seem to have a special interest in organizations critical of police misconduct: Denver CopWatch has itself been watched by cops, while two more watchdog groups, End the Politics of Cruelty and Justice for Mena, were tarred with the "criminal extremist" label. (Justice for Mena is concerned with the death of Ismael Mena, a man shot in 1999 when a SWAT team raided the wrong house.)

Not that other organizations were immune from police attention. One dossier notes that an activist was "Speaker and event organizer for Amnesty International, demonstration 2-23-2000"—ominous behavior indeed.

Mayor Wellington Webb—himself a target of FBI surveillance in the 1970s—has promised an official review of the files and of the procedures that produced them. While that has pleased local activists, many feel it does not go far enough. CopWatch wants the audit to be conducted by a broad-based panel that includes representatives of the protest community. It also bemoans the city's refusal to release the dossiers to the people discussed within them. "We think we should be able to see our own files," says Lankford. "And we want to know who they've shared them with."

Immigration trends

Rotten Denmark

Jeremy Lott

TO DEPORT OR not to deport? That is one question—among others—now being considered by Danish politicians in the wake of last year's right-wing landslide. Last November Pia Kjaersgaard, a grandmotherly, Nordic version of Pat Buchanan, led the Danish People's Party through an election that doubled its seats in parliament. In the wake of September 11, the party not only emerged from the fringe to take third place, but also set the terms of debate for the election.

During the brief campaign, Kjaersgaard soared in popularity while condemning immigrants, blaming them for a recent uptick in inner-city gang violence. She was particularly hostile to Muslims. In August the party compiled the much-reviled "immigrants list," publishing the names and locations of 5,000 recently naturalized immigrants in a national newspaper.

The three major parties—the Social Democrats, the Social Liberals, and the center-right Liberal Party—fell in line, arguing only over how much to cut back immigration. The Liberal Party, which won the elections, backed an end to refugees, further restrictions on entry, a more difficult path to naturalization, and exclusion of noncitizens from welfare benefits.

When Jorge Haider's anti-immigrant Freedom Party joined Austria's ruling coalition a few years back, the European Union imposed sanctions. To avoid such a fate, Kjaersgaard was not offered a cabinet seat. But the DPP, allied with the ruling Liberal Party, has begun to wield significant influence in the new government, which has pro- »

Quotes

"Putting a libertarian in charge of the INS is like asking Gloria Steinem to take over all of the anti-abortion efforts in the United States."

—Rep. Tom Tancredo, R-Colo., chairman of the congressional immigration reform caucus, discussing INS head James Ziglar in *The San Diego Union-Tribune* on March 19

"Watching a stream of running water, hearing the birds sing; marveling at Allah's creations: it's just not as exciting as wearing a designer watch and buying diamonds and jewelry!"

— Rawan, a Saudi Arabian high school teacher, in *Arab News* on March 20

Source

Bjørn Lomborg, author of the litany-busting *Skeptical Environmentalist*, is now defending his book online against a massive barrage of criticism. The defense, originally posted at Lomborg's site, www.lomborg.com, includes a point-by-point response to the critiques published in *Scientific American*.

But not if the magazine has its way. Lomborg removed the page when *Scientific American* threatened to sue him for republishing the original critiques without permission. Patrick Moore, the estranged former director of Greenpeace, has reposted it on his site at greenspirit.com/lomborg.

Scientific American has now threatened Moore as well. If the page disappears, try searching for it on www.google.com, which saves "cached" snapshots of inactive pages.

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Brickbats

Last February, about 20 British Marines went a bit off course during an exercise. They were supposed to land on Gibraltar. Instead, they invaded Spain. Locals quickly informed the marines that they were in the wrong *país*.

Jack Weigand wanted a new laptop, so he ordered one from Dell and was given a delivery date of February 21. The day came and went, and no computer arrived. Dell had canceled his order: Weigand is a gun dealer, and the company says it is required by law to screen buyers and deny computers to those who might use them illegally.

When Londoner Colin May heard noises in his backyard, he went out to inspect, grabbing a knife in case it was a vandal or burglar. Instead of meeting a thief, he was jumped by police officers, who had been called by a neighbor. Unaware the men were cops, May ran away—until a police car knocked him down, breaking his leg. At that point, all that had occurred was a series of misunderstandings. But then, as May was on the ground begging for help from people he now knew to be the police, the officers taunted him. One put his foot on May's stomach and threatened to run over him again. They didn't know that a nearby security camera had caught everything.

The letterhead read *Tony Sanchez for Goneror*, and it went downhill from there. As you may have guessed, Texas Democrat Sanchez actually wants to be the state's *governor*. But a campaign thank-you letter to the Texas State Teachers Association was full of misspellings and grammatical errors. The campaign even got the association's name wrong.

Norway's Socialist Left Party wants a new Samsung mobile phone withdrawn from sale in the country because it has a body-mass calculator and counts calories. The party worries that the phones could hurt the self-esteem of the overweight, especially women.

Roy Moore is the chief justice of the Alabama Supreme Court, but he isn't known for judiciousness. He first gained prominence as a trial judge in Etowah County when he defied a state order by posting the Ten Commandments in his courtroom. This year, when the court used state law to strip a lesbian mother of custody of her three children, Moore spent most of the 33 pages of his concurring opinion attacking homosexuality as an "inherent evil." Citing the Bible, Moore insisted that "if a person openly engages in such a practice, that fact alone would render him or her an unfit parent."

Fairfax City, Virginia, has banned children from playing in city streets, and has already removed scores of illegal basketball hoops. Sadly, Fairfax City isn't alone. Towns across the nation have moved to ban once-common street games. Backers say that they are merely keeping kids from getting hit by cars. Critics argue that the measures are being proposed by those who simply don't want kids making any noise.

Charles Oliver

posed legislation to trim the number of refugees accepted and to cut back on benefits offered to newcomers.

Bertel Haarder, the new immigration minister, has sought to allay E.U. fears. He told the BBC, "We have the highest asylum acceptance rate in the world probably. What we would like is simply to come down to Swedish or even to British levels."

Marriage rights

Gender Bender

Sara Rimensnyder

TRANSSEXUAL WIDOW J'Noel Gardiner, whose 1998 marriage was recently declared invalid in Kansas, has never welcomed media attention. In one of few comments to the press during the three-year run of her case, she told the *Kansas City Star*, "It's a private lawsuit and nobody's business. Why don't you go join the *Jerry Springer Show*?"

She should be right. The trouble is, restrictions on marriage codified in law turn private sex lives into public business.

J'Noel's legal troubles began in 1999, when her husband Marshall passed away without a will. Soon, Marshall's estranged son Joe Gardiner found out that J'Noel was once Jay Noel, and he challenged her right to share the $2.5 million estate under a state law that automatically gives a portion to a decedent's spouse.

J'Noel's sex change had taken place in 1994, in Wisconsin. Afterward, authorities there allowed her to change her name and the sex on her birth certificate from male to female. Neither

that document, nor her electrolysis, thermolysis, tracheal shave, hormone injections, extensive counseling, or reassignment surgery constituted femalehood for the Kansas Supreme Court.

"J'Noel remains a transsexual, and a male for purposes of marriage under [Kansas law]," the judges' decision read. "We recognize that there are people who do not fit neatly into the commonly recognized category of male or female....However, the validity of J'Noel's marriage to Marshall is a question of public policy to be addressed by the legislature and not by this court."

The judges affirmed Joe Gardiner's win at the district court, which had ruled largely based on an earlier Texas trial. In that case, the judges asked, "Can a physician change the gender of a person with a scalpel, drugs and counseling, or is a person's gender immutably fixed by our Creator at birth?" They came down in favor of the latter.

Medicated until proven guilty

Drugged Trials

Brian Doherty

A FEDERAL APPEALS court delivered a decision in March that could open the floodgates of forced drugging of prisoners—even before they're proven guilty of any crime.

Charles Sell has been held without bond pending trial since early 1998. Originally charged with Medicaid fraud, Sell allegedly made threats against potential witnesses, leading to further charges of conspiring to kill a witness and an FBI agent. Because of screaming fits during court appearances and apparently paranoid delusions, including Sell's stated belief that he knew secrets about government culpability in the deaths at Waco, the court decided in April 1999 that Sell was not competent to stand trial.

Two psychiatrists declared that Sell needed antipsychotic medicine in order to become competent. Sell offered the testimony of his own psychiatrist, who said he didn't think the

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Balance Sheet

Jeff A. Taylor

Border Busters

Congress slaps the INS for slapping whistleblowers. The agency had transferred and threatened employees who said the borders were a mess.

Seed Scene

Biotech firms Syngenta and Monsanto pledge to make public aspects of the technology behind genetically modified rice. On the downside, anti-GM activists say it still won't make the crops safe.

Magic Beans

Ward Connerly revs up the Racial Policy Initiative, an attempt to get Californians to vote on racial bean counting. Should his intiative pass, the state stops most of its check-box labeling schemes.

Up Periscope

A fed-up Kentucky lawmaker introduces a bill to buy the *USS Louisville* from the Pentagon and turn it loose in the Ohio River. The target: Indiana's state-licensed riverboat casinos.

Watt Answer

Forget microradio: Picoradio looms. Berkeley's Wireless Research Center builds a wireless network that uses almost no power yet can control complex systems such as high-rise thermostats.

Bad Water

More than a decade on, the final independent counsel report on Whitewater concludes with what was nearly self-evident from the start: Bill and Hillary did the kinds of deals that got other folks indicted.

Dutch Treat

A Dutch court rules that file-trading company Kazaa is not responsible for copyright violations committed by people using the Napster-like program. It is the first such "safe harbor" decision for swapping software.

White-Shirt Team

The FBI's data net is so low-tech that it has to overnight mug shots of terrorists to far-flung offices. The bureau has turned to the genealogists of the Mormon church for expertise on how to build name-tracking databases.

Big Lie

The Consumer Broadband and Digital Television Promotion Act is as fraudulent as the name implies. As law it would ban MP3 players or any recording device that wasn't licensed by Hollywood and the music industry.

Rotten CARP

The Copyright Arbitration Royalty Panel relies on 25 defunct webcasters to set royalty rates for Net radio. Only Yahoo! is still in business after trying to pay the royalties in those "model" agreements.

Pants Police

The Louisiana Supreme Court says sodomy is still illegal. Could a round-up of conventioneers prowling the Big Easy for a "date" be next? Nah.

Click-Click Boom

Anti-gun activist Sarah Brady buys a .30-06 hunting rifle for her son, skirting a criminal background check for him. Such "loopholes" must not just be for gun nuts.

Closet Cleaning

Rosie O'Donnell comes "out" on national TV years after the tabloids said she was gay. Her avowed concern for gays who want to be parents seems more like an attempt to keep the public from shrugging.

Mail Bomb

First-class mail use is stagnant, so the cash-poor Postal Service hikes the stamp price to 37 cents. The mailmen blame last fall's anthrax scares, but the General Accounting Office says a new business model is needed.

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Data

Government Wages

Mike Lynch

The relative wages of top-tier presidential appointees are in decline, frets a Brookings Institution study released in March. In 1969, top government officials earned 5.6 times what the average American family took home. By 2000, the $121,600 to $166,700 annual salary taxpayers pay these public servants had fallen to only 2.6 times what the average family earned.

There's no need to write a check to the undersecretary relief fund. Careful readers of the study will discover that low compensation is hardly a problem for our premier bureaucrats. Typically, the appointees are workers already living in Washington, D.C., and the political job approaches or surpasses the highest paying gig they've ever had. And far from being self-sacrificing detours from lucrative careers, the stints—which usually last about two years—are akin to graduate programs that propel people into even higher-paying posts.

Higher Earnings: Career Paths of Senate-Confirmed Presidential Appointees

Employer	Pre-Appointment Employment	Post-Appointment Employment
Federal government	35 %	13 %
Business or corporation	18	34
Law firm	17	21
Educational institution or research organization	14	16
State or local government	8	2
Charitable or nonprofit organization	4	7
Interest group	1	2
Other or no answer	3	5

Source: "The Merit and Reputation of an Administration," The Presidential Appointee Initiative, 2000

› accused would respond well to the medication.

The fight ended up before a magistrate and then a district court, each of whom decided that Sell had to be drugged, but for different reasons. The magistrate said it was because he presented a danger to himself and others. The District Court for the Eastern District of Missouri declared that even though Sell *did not* pose a danger to himself or others, the state's interest in having him competent to stand trial overrode his right to refuse medication. In a 2–1 decision, the 8th Circuit Court of Appeals has now upheld that ruling.

In a dissent, Circuit Judge Kermit E. Bye declared that, based on previous Supreme Court decisions that tried to balance state and individual interests regarding forced medication, Sell's alleged crimes were not severe enough to justify drugging him. In an amicus brief, Karen Tripp, an attorney for the Association of American Physicians and Surgeons (AAPS), discussed the known potential health risks of antipsychotic drugs, and said that "imposing a risk of a horrifying death on a prisoner is contrary to the presumption that he is innocent until proven guilty." Further, "Giving *carte blanche* to prison medical staff to inject dangerous drugs...into a peaceful prisoner they already dislike...removes the essential protection of informed consent against abusive treatment with respect to an uncooperative prisoner." The AAPS plans to spearhead a further appeal of this decision. ▣

Little white Indians

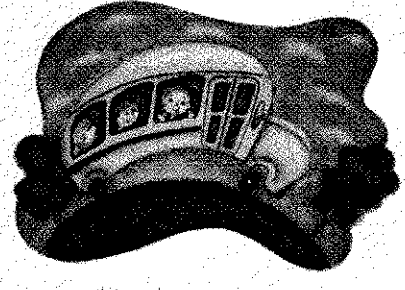
Ethnic Engineering

Mike Lynch

AN ELEMENTARY SCHOOL in the small Sierra Nevada town of Colfax, California, entered the era of educational accountability this year when the state withheld $31,000 in special funds on the grounds that 69 American Indian students had failed to measure up academically. Under California's accountability law, schools must improve the test scores of minority "sub-groups" in order to earn reward money, even if the overall test scores would merit a cash reward. Colfax's overall scores made the grade, but the scores of its Native Americans, 20 percent of its student body, didn't improve.

This penalty struck teachers and parents as unjust, most notably because they claim the "Native Americans" are actually white. "We looked at the census and the Native American population was right around 1 percent," says Steve DePue of the California Teachers Association.

But that didn't stop the town's only elementary school from claiming up to 99 American Indian students in order to secure $14,695 in *federal* funding from the U.S. Department of Education Office of Indian Education. To get that windfall, some of the parents signed forms vouching that their children are part American Indian. Those same parents were then outraged when their low-performing "Indian" population led to the loss of the state's $31,000. Apparently, they don't feel there is a discrepancy in claiming Indian ancestry for their children in order to get federal money even while they consider them to be white for the purposes of grabbing state dough.



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Immigration Advocate

Mike Lynch

Michael Barone

Critics of immigration argue that today's newcomers are changing the character of America for the worse. Sure we're a nation of immigrants, they'll allow, but the past waves of immigrants came from European stock and were assimilated. Today, they're convinced, the melting pot has gone cold.

Journalist Michael Barone, America's leading applied political scientist, disagrees. "Many savants predicted a hundred years ago that the immigrants of their day could never be assimilated," he writes in his recent book *The New Americans* (Regnery). "History has proven them wrong."

Barone, who rejects fixed notions of race and ethnicity, notes that earlier waves of immigrants from Italy, Ireland, and Eastern Europe were no more considered "white" or "American" than are today's sojourners from Latin America or Asia. Just as the Irish somehow managed to become "white," today's immigrants will transform themselves and change America for the better.

National Correspondent Mike Lynch talked with Barone in March.

Q: How is the war on terror affecting immigration as a political issue?

A: It has put proposals for change in immigration rules, particularly with respect to Mexico, under a cloud. What it has not done is create a huge political demand for shutting down immigration.

Q: Does that surprise you?

A: No, because I don't think the country is as anti-immigrant as some people believe. We have seen proposals to change the way we handle immigration, particularly from Middle Eastern countries, and proposals to keep better track of people with student visas. All of those make sense to some degree. But the country hasn't been swept by a demand for a "time out" on immigration.

Q: Will immigration be an issue in the 2002 elections?

A: It won't be a big issue in most elections because there's not a sharp partisan difference on it. Bush's proposal to allow immigrants to reapply for legal status in the United States instead of having to return to their home country got more support in the House from Democrats than from Republicans.

Q: Are immigrants still assimilating?

A: On the whole, immigrants are assimilating, as they did in the past. To some extent they encounter less overt bigotry than they did in the past. In some respects we are not doing as well as a society in promoting assimilation. In particular, so-called bilingual education programs that keep kids in Spanish classes and out of English classes have made it harder for many Hispanics to assimilate.

Some on the left would say that promoting assimilation is a form of bigotry. That's baloney. On the contrary, it's opening up a culture and opportunities to people who come here.

The white Indians caused a stir when the story broke in *The Sacramento Bee* in late February. But it appears to be ending well. Two officials from the Office of Indian Education made the trek west, examined the paperwork, and found it in order, according to the school's principal, Gayle Garbolino-Mojica.

"When the form is filled out, it's not necessarily the schools or the U.S. Department of Education, or anyone else's privilege to go and counteract what the parent is saying," says Ms. Garbolino-Mojica. "In all legalities, that parent is saying that child, parent, or grandparent has a tribal affiliation and that is the end of the story."

The tobacco settlement

Government Smokes

Charles Paul Freund

How are states using their tobacco settlement windfall? The Investor Responsibility Research Center (IRRC) recently surveyed state treasurers to find out. It found that seven states—Texas, Connecticut, New Mexico, North Carolina, North Dakota, Utah, and West Virginia—had taken millions of dollars intended to reimburse them for tobacco-related health expenditures and invested the funds in tobacco companies.

The IRRC findings were reported by the Cybercast News Service (CNS) in a series of stories in March. Doug Cogan, director of IRRC's Tobacco Information Service, told CNS that even beyond the investments—Texas alone put $10 million into tobacco stocks—very few tobacco-settlement dollars were being spent on preventing tobacco use. Cogan puts the figure at as little as 5 percent. (The General Accounting Office estimated last year that 7 percent of the settlement was being used for prevention programs.)

According to the terms of the settlement, 46 states will receive $206 billion from tobacco companies over the next 25 years, with no stipulation as to how the funds will be spent. Because some 95 percent of this money is being poured into general revenues, the states have actually become invested in the financial well-being of the companies.

Bob Levy, a senior fellow at the Cato Institute, told CNS that because "the states get their money only if the tobacco companies are healthy and making lots of money," the settlement has ended up as a "collusion between the states and the tobacco companies." According to Levy, "you now have a quadropoly of the four tobacco giants and nobody else is permitted to do business, and this is all maintained as an anti-competitive cartel by the states as a result of the settlement agreement."

Because the settlement has enriched the states, many of whom have enriched the tobacco companies by helping support their stock values, Levy concludes that the settlement "certainly has been a success for the attorneys general. It has certainly been a success for the tobacco companies." It was also a notorious success for the lawyers who engineered the settlement; they reaped billions of dollars in fees. What about the smokers, most of them bunched in the lower and lower-middle income brackets, who are paying astronomical prices? Never mind.

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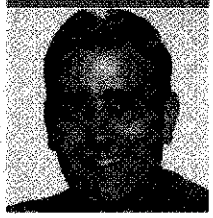

Family Matters

Welfare reform has liberals and conservatives calling for government action.

LATELY, I'VE BEEN questioning why I'm not an enthusiastic modern liberal, a real let's-call-in-the-government-to-do-good-things progressive. After all, I relish the world that the forces of liberalism seem to have produced. The liberationist movements of the 1960s and '70s have enriched my life immeasurably. I was free to marry whom I wanted thanks to a U.S. Supreme Court decision made two years before my birth that abolished state laws banning interracial marriage. My 6-month-old daughter has an openly gay godfather, a man who'll no doubt provide her with a moral foundation less disturbing than the one given to hundreds of children by certain Catholic priests. My wife has a better job than I do, if such things are measured in money and cultural prestige. I have no interest in trading this world for any that has gone before, even if the feds neither taxed personal income nor published the *Federal Register* back in the supposedly good old days.

Then the mailman brought the April 8 issue of *The American Prospect*, a magazine dedicated to presenting a "practical and convincing vision of liberal philosophy, politics, and public life."

This special double issue calls on assorted social policy mavens to enlighten us on "The Politics of Family." The issue (available online at www.prospect.org/issue_pages/children) is in part a reaction to George W. Bush's welfare reform package. Bush is calling for $300 million in taxpayer spending to promote marriage among people unfortunate enough to be dependent on the federal government.

"The federal government is suddenly very interested in marriage," says the *Prospect*. "The principal target of this matchmaking is the welfare population, though many traditionalists would turn the marriage movement into a generalized crusade. It adds up to something that most conservatives ordinarily abhor—social engineering, and in the most intimate of human realms."

There's plenty to lambaste "pro-family" right-wingers about, and the *Prospect* scores many points against the conservative marriage counselors. For instance, if marriage is the cornerstone of civilization, then why not allow gays and lesbians access to wedded bliss? Furthermore, contrary to the hippie-hating right, family breakdown didn't start in the 1960s. Historian Stephanie Coontz, author of the important book *The Way We Never Were: American Families and the Nostalgia Trap*, shows that marriage has been in "crisis" at least since the 1920s, when everyone began to demand more from matrimony than simple economic security.

Yet the *Prospect*'s contributors don't limit themselves to critiquing conservative foibles, exposing ideological inconsistencies, and providing an overview of the health of contemporary American families. As good liberals, they too are keen on using the state to create exactly the sort of families—and larger society—they want, regardless of the invasiveness such programs inevitably entail. Worse, they apparently believe that such an overhaul can be achieved via the easy implementation of bossy policy. They must have missed the day at school when the rest of the country learned that Great Society programs were most successful at creating more social problems, not fixing existing ones.

It all sounds so authoritative. The contributors give the impression that good-hearted planners can easily achieve their intended aims. They also throw around amorphous terms such as *we* and *society*, obscuring the real actors in the welfare state: local civil servants who are account-

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able to federal civil servants, who are accountable to political appointees, who are accountable to Congress.

"Our goal should be to help less-educated women follow a similar path," writes Isabel Sawhill, a senior fellow at the Brookings Institution. The path to which she refers is the now common practice of holding off marriage and mommying until the late 20s. "The [conservative] alternative—to encourage girls in their teens or early twenties to marry—is not consistent with society's interest in encouraging people to acquire the skills needed in the new economy or with the job opportunities available to today's young women."

Why exactly it's up to "us" to set goals for less-educated women and to slot them into their proper role in promoting that great fiction of "society's interest" is left unsaid. Maybe even less-educated women are smart enough to get by without conservatives shoving them to the altar—or liberals shoving them into classrooms.

Sawhill has nothing on Theodora Ooms of the Center for Law and Social Policy. People "lack access to jobs that pay decently," writes Ooms, as if workers are barred from the elevator that reaches the executive suite. In fact, they don't have the skills to convince anyone to hire them for a decent-paying job.

Ooms likes to speak of the U.S. as one big family domiciled in D.C. "We should reach out to young parents to help them achieve their desire to remain together as a family," she argues, referring to young parents dubbed "fragile families" by creative researchers. These are unmarried couples who have children and who are still sleeping together with some frequency. Ooms never says why such couples can't achieve their desire to stay together—perhaps the office handing out marriage licenses is on the same floor as the executive suite.

As for the "we," Ooms and her friends are of course free to provide the services she recommends. Or, same thing, to create a nonprofit to do so. She already has a suggested curriculum, a "combination of 'soft' services—relationship-building and marriage-education workshops, financial management classes, and peer support groups—and 'hard' services—job training and placement, housing, medical coverage, and substance abuse treatment, if necessary." Perhaps she can pass out advanced degrees in being poor to the few people who complete this patronizing gauntlet. (Few will, as versions of this course plan have been offered for years with little effect.)

Most Americans who've survived at least two years of college are familiar with the gripe that the U.S. government doesn't live up to Europe when it comes to tucking citizens snugly under a safety blanket of taxpayer-funded social services. But the *Prospect* wants to make *really* sure you know it. "In Sweden and France, 80 percent to 95 percent of children ages three to five are in publicly supported day care," writes University of Pittsburgh sociologist Karen Christopher.

The European benchmark is especially intrusive when combined with a call for the government to promote equality *inside* marriages—think of bureaucrats drawing up the household chore list. Janet Gornick, a political scientist at the City University of New York, is not content for the government to transfer massive resources from the two-thirds of U.S. households without children to the one-

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OOPS! We Can't Find the Government!

Princess Navina has spent her young life studying the governments of other lands, but in Voluntaria she draws a blank. Reacting against their history of past violence, the people of Voluntaria have sworn off using force to manage society. As a result, they have none of the political fixtures of the modern world: no taxation, no regulation, no laws... and no lawyers!

How do they solve the problems of daily life without depending on politicians? The solution is so simple one wonders why no one has thought of it before.

Political scientist Jim Payne, the creator of the Princess Navina series, has written fourteen books on topics ranging from the Peruvian labor movement to the U. S. Congress. "After 41 years of research," he says, "I think I've figured out what's wrong with government and what we can do about it. I've put the answer in fictional form to engage youthful minds without distressing elderly ones."

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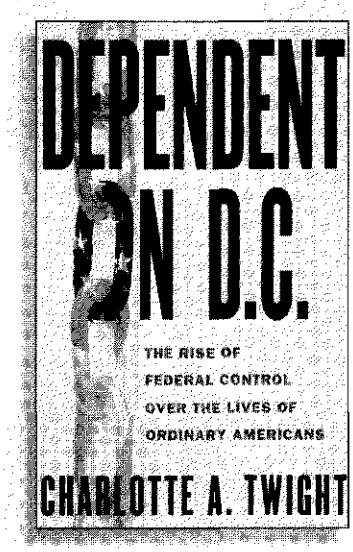

This addiction is rarely discussed. It's Washington's dirty little secret. Almost everyone you know is hooked on it, one way or another. Charlotte Twight's compelling new book is about increasing dependency on big government and the effects of this addiction on our independence, privacy, and personal freedoms. From such seemingly innocent programs as health care regulation, public education, and Social Security to income tax withholding and massive federal databases, Twight chronicles the hidden hand of government programs and Washington's growing ability to reach deep into our lives.

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third with them. (That is, after all, what her proposals for a mandated maximum work week of 37.5 hours, extended paid maternity and paternity leave, and universal taxpayer-supported child care would do.) She understands full well that even when American men are given every option to embrace the role of Mr. Mom, they may still need a push.

Writes Gornick, "Policy makers in Europe have learned that parental-leave benefits that can't be transferred to female partners and that include high wage-replacement rates encourage fathers to take the leave to which they're entitled." Translation: It's not enough to pass a law forcing employers to provide paternity leave. Fathers must be paid nearly their entire salaries to stay home and be prevented from transferring the leave time to mothers. But even here, the progressive social engineer's task is not complete. Planners can't be sure that men will make good use of their mandated leave. So we need a taxpayer-supported propaganda campaign urging men to pitch in around the house. The usually sensible Swiss have allowed their government to bombard them with a "Fair Play at Home" campaign that, Gornick notes approvingly, "is aimed at 'nudging married men' to share the work at home."

Tax me to pay advertising agencies, newspapers, and television stations to tell me to change more diapers, make a better dinner salad, and empty the dishwasher? That's reason enough to reject modern liberalism. Thanks to *The American Prospect* for refreshing my memory. ▪

Mike Lynch (mwlynch@reason.com) is **reason***'s national correspondent.*

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Our Bodies, Our Scholarship

Unwomen, "happy" marriage, foreign male elements, and women's studies

WOMEN'S STUDIES PROGRAMS are rife with radical feminist ideology, concludes a recent report by the right-of-center Independent Women's Forum (IWF)—a revelation about as shocking as the news that rap lyrics contain a lot of raunchy language. Nevertheless, the IWF report, *Lying in a Room of One's Own: How Women's Studies Textbooks Miseducate Students*, by Christine Stolba, offers an interesting analysis of an academic discipline (or, as some of its critics would call it, a pseudo-academic pseudo-discipline) that has been steadily gaining ground on campuses since its inception some three decades ago.

The report analyzes five of the most popular textbooks used in introductory women's studies courses. It is at its strongest when it focuses on errors of fact. For example, the textbooks report that medical research has ignored and shortchanged women, without acknowledging the challenges to such assertions.

One book, *Thinking About Women: Sociological Perspectives on Sex and Gender*, by Margaret L. Andersen, advises readers not to get too excited about new medical breakthroughs because "you might well find out that all the subjects in the study were men and that the same insights or procedures that medical researchers are heralding as advancing medical science have not been at all considered for their implications for women's health." In reality, as early as 1979, over 90 percent of all clinical trials funded by the National Institutes of Health included women.

The same book also suggests, without citing any evidence, that more resources have been poured into treatments for male impotence than into research on breast cancer. Meanwhile, it fails to mention the fact that at least since the 1980s, breast cancer has received more research funding than any other type of cancer. Dubious claims about educational bias against women and domestic violence are repeated just as uncritically.

Not surprisingly, women's studies textbooks also treat male-female disparities in the workplace as evidence of discrimination and oppression. They tend to be suspicious of free markets in general. Other patterns identified in the IWF study include a tendency to turn women with the wrong politics, such as Margaret Thatcher, into "unpersons" (or at least "unwomen"); to present only one side of controversies on such issues as the merits of day care; and to treat women who make politically incorrect choices, such as curtailing their employment to raise families, as dupes "apparently unaware that in these decisions they are following traditional gender stereotypes."

Marriage is viewed with such a jaundiced eye that happy marriages are mentioned with the word *happy* in ironic quotation marks; motherhood is presented largely as a burden, fatherhood as something even worse. According to one book, *Women's Realities, Women's Choices: An Introduction to Women's Studies*, by the Hunter College Women's Studies Collective, "Daughters often find ourselves in league with our mothers against the foreign male element represented by the father."

Some nuggets cited in the report are downright bizarre. For example, *Thinking About Women* suggests that homemaking is literally a hazardous occupation, since it "exposes [women] to a wide variety of toxic substances" that are not subjected to the same government regulations as in industrial settings, and darkly states that "the high death rate by cancer among housewives [has not] been widely discussed." No factual sub-

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stantiation is given for the alarming implication.

Some of the IWF's critique, however, is on very shaky ground. Should we really be incensed because *Women's Realities, Women's Choices* states that women can be discouraged by the perceived lack of important women artists, quoting literary scholar Helen Vendler's comment that "no woman can fail to hope for the appearance of a woman poet of Shakespearean or Keatsian power"?

This doesn't necessarily assume, as the IWF's Stolba complains, that "women can't or shouldn't draw inspiration from male artists." One can be inspired by Shakespeare or Leonardo da Vinci and still find one's self-confidence somewhat dampened by an all-male pantheon. Occasionally, too, *Lying in a Room of One's Own* seems to reflect the IWF's own agenda—suggesting, for instance, that ultraconservative writer F. Carolyn Graglia's paeans to "the joys of domestic life" warrant inclusion in women's studies textbooks.

The principal charge in the IWF study—that women's studies courses are heavily biased toward feminist viewpoints and against traditional gender roles—undoubtedly would elicit no more than an amused shrug from most women's studies professors. As University of Massachusetts at Amherst professor Daphne Patai and Indiana University professor Noretta Koertge reported in their 1994 book, *Professing Feminism: Cautionary Tales From the Strange World of Women's Studies*, the assumption that women's studies constitutes the academic arm of the feminist movement is quite common in women's studies departments. Many programs openly list raising "feminist consciousness," promoting "feminist advocacy," and addressing "the campus-wide problems of sexism, racism, and other injustices" among their goals. The publications of the National Women's Studies Association also assume that women's studies courses must champion feminism.

What's wrong with that? For one thing, such an approach explicitly subordinates scholarship to political goals. Even more problematic is that women's studies courses tend to embrace a very particular, narrowly defined brand of feminism. It not only looks critically at traditional female roles; it labels as anti-feminist the view that women in the United States today have equal opportunity and assumes that American women "still live in a hostile environment."

Some have concluded that the field of women's studies is even more politicized and radicalized today than it was in the early 1990s. But does it really matter?

Academic feminists may argue that the pro-feminist bias in women's studies is necessary to counteract traditional biases that remain pervasive in the rest of the academy and in the culture at large. If this claim had validity in the early 1970s, however, it is certainly specious today, when feminist attitudes are widespread in the culture and especially in the universities.

In the updated edition of *Professing Feminism*, to be published later this year, Patai and Koertge conclude that the field of women's studies is even more politicized and radicalized today than it was in the early 1990s. One may ask if this really matters. After all, the radical feminist orientation of these courses is an open secret, so we are not talking about innocents lured into women's studies with promises of solid, scholarly, reasonably objective courses on women's history or the sociology of gender. Most young women respond to the politics of women's studies by staying away in droves. They may subscribe to broadly defined feminist goals yet hold women's studies in contempt.

Nevertheless, there are causes for concern. As Patai and Koertge convincingly argue, the negative influence of women's studies often spreads to other departments, contributing to a campus-wide climate of political and sexual correctness. Perhaps no less important, women's studies in its current state does a real disservice to serious scholarship on women and gender. Those who believe that such scholarship is needed should be among the first to call for reform. ◻

Contributing Editor Cathy Young (cathyyoung2@cs.com) writes a column for The Boston Globe. She is the author Ceasefire! Why Women and Men Must Join Forces to Achieve True Equality (1999) and Growing Up in Moscow: Memories of a Soviet Girlhood (1989).

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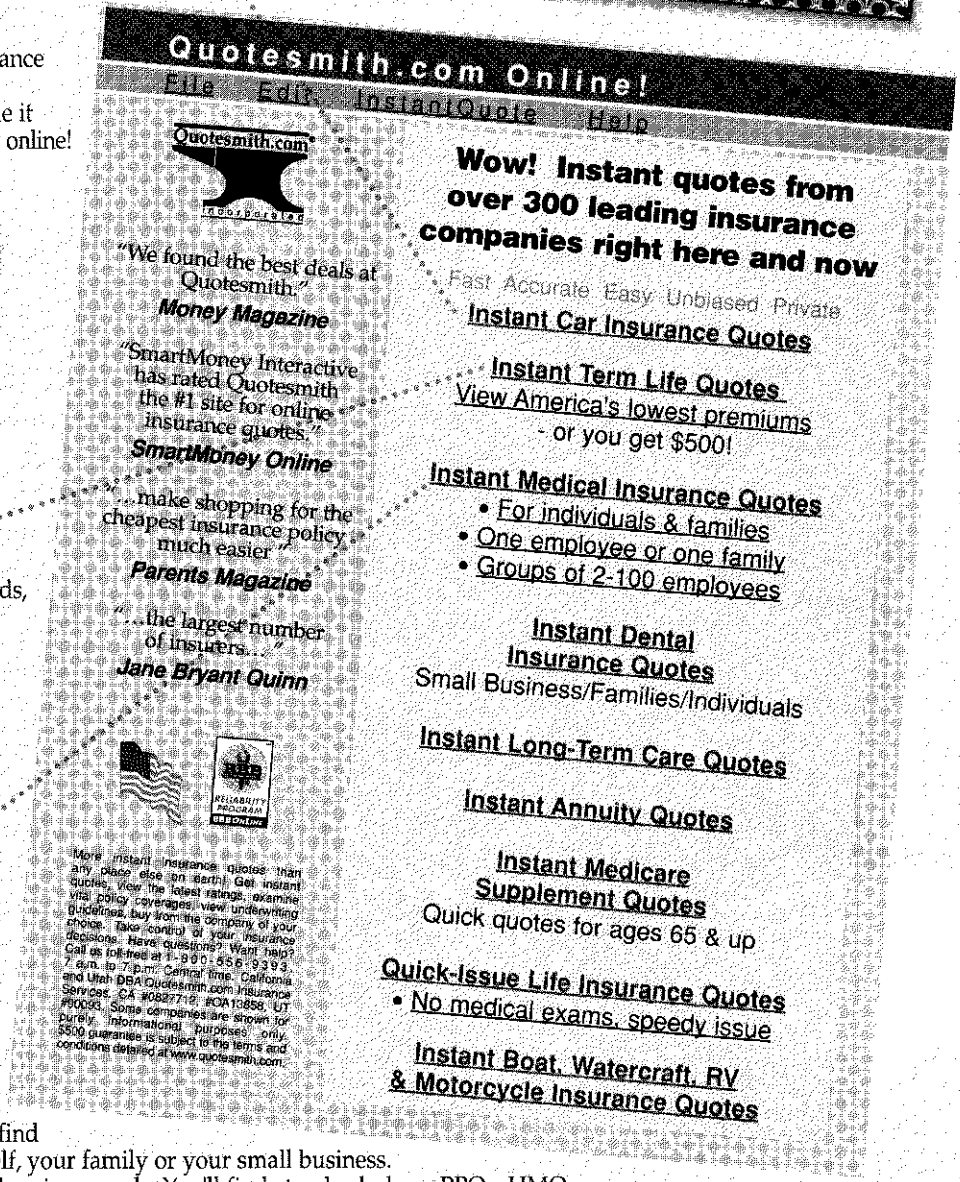
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Rant: Nick Gillespie

Violent Reruns

Our faults lie not in our TV stars but in ourselves.

Remember the 1990s TV series *The Incredible Hulk*? Based on a Marvel comic, it followed the pathetic journey to the end of night of one David Bruce Banner, who famously got belted by gamma rays and thereafter turned into a muscle-bound, green-skinned rage-holic whenever he had to stand behind shoppers with too many items in the express checkout line, renew his driver's license, or sit through another Jimmy Carter sermonette on thermostat settings.

According to the latest research on television and violent behavior—a genre of the social sciences that is the rough equivalent of the seemingly unkillable permutations of *Scooby Doo* cartoons—it turns out that we're all Incredible Hulks now, especially if we watch more than three hours of the boob tube a day.

This we know thanks to the persistent efforts Dr. Jeffrey G. Johnson of Columbia University and the New York State Psychiatric Institute (presumably, he's on the staff?). Johnson and his fellow researchers tracked around 700 kids in two upstate New York counties over 17 years and found that those who watched a lot of television were more likely to be aggressive as they got older.

Over one eight-year period, say the researchers, only 5.7 percent of the participants who watched less than an hour of TV a day committed a "violent act." The figure was 15.4 percent for those who watched one to three hours a day and 25.3 percent for the ostensible couch potatoes planted in front of the green-eyed monster for more than three hours a day. Even more striking: The study found that watching *any* sort of programming is enough to unleash the Hulk within.

We probably knew this all along, but apparently *7th Heaven* enrages us every bit as much as *South Park*.

Sounding more like a mild scold and less like a real one—and brushing aside his own work's catholic condemnation of small-screen spectacle—Johnson told *The New York Times*, "By decreasing exposure to media violence, we may be able to prevent millions of Americans from being raped and murdered."

This latest study is, of course, the same slapdash that we've heard ever since TVs became a common household appliance; it participates in the venerable, centuries-old tradition of vilifying mass culture ranging from novels to comic books to movies to popular music. As such, it tells us precious little about its apparent subject. As psychologist Jonathan Freedman, author of the new comprehensive analysis *Media Violence Is a Scapegoat: Scientific Evidence of the Effect on Aggression* (University of Toronto), pointed out to *The New York Post*, Johnson's study "has nothing to do with TV—it has to do with lifestyle. ... People who watch more than three hours of TV are different than those who watch less than an hour."

Indeed, the new study is far less remarkable for its conclusions than for its hoo-hum reception. Just a few years ago, precisely this sort of thing gave rise to White House "summits" on the need for a V-chip in every pot, censorious warnings from the U.S. attorney general that Hollywood had better clean up its act pronto (or else!), and congressional hearings featuring self-appointed morals czar Bill Bennett doing his own Hulk impersonation while decrying the lack of outrage. This time around though, the "provocative new study" (in the *Post*'s phrase) garnered about as much sustained interest as a sitcom featuring a former *Soupy!* cast member.

What explains the glorious lack of panic? Maybe Americans have finally lost interest in reruns, whether they're of old TV shows or old complaints about TV shows. Maybe we're too busy watching the western's best new show, MTV's *The Osbournes*, which features rocker Ozzy Osbourne—himself accused of fomenting death and destruction back when heavy metal was understood to be the leading cause of social decline—as the most bizarre, lovable, and dysfunctional TV patriarch since Herman Munster. Or maybe after years of increasingly lurid entertainment and declining violent crime rates, we're simply willing to acknowledge that our faults lie not in our TV stars but in ourselves. ■

Nick Gillespie (nick@reason.com) is reason's editor-in-chief.

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THE LIFE CYCLE OF A HACK

(PETERBAGGE@EARTHLINK.NET)

1957
MOM! DAD! GREAT NEWS!
LARRY LEARY JUST HIRED ME AS A JOKE WRITER!
WHAT? YOU'RE GONNA WORK FOR THAT IDIOT COMEDIAN?
WE HAD MUCH HIGHER HOPES FOR YOU, SON...
BUT, THIS IS A DREAM COME TRUE FOR ME!
1966
GUESS WHAT, GANG? WE JUST GOT NOMINATED FOR AN EMMY!
ALL RIGHT!
I GUESS WE SHOWED THOSE CRITICS, HUH?
OH BOY! I'M "LEGIT" NOW!
THE LARRY LEARY SHOW WRITER'S ROOM
WAIT'LL I TELL THE FOLKS!
1975
...THE FACT IS, PRIMETIME TV HAS A HUGE INFLUENCE ON OUR CULTURE...
YEAH, A BAD INFLUENCE!
AND DIDN'T YOU USED TO WRITE FOR THAT AWFUL LARRY LEARY SHOW"?
HA-HA!
HA-HA!
SYMPOSIUM ON THE
1984
THE MAIN POINT BEHIND THIS SHOW I'M PITCHING IS IT'S SOCIAL RELEVANCY..
THAT'S NICE. TOO BAD NO ONE WILL WATCH IT...
SAY, WHY DON'T YOU DEVELOP SOMETHING WITH THAT HOT YOUNG COMIC, BARRY BERGMAN?
HE'S, LIKE, THE NEW LARRY LEARY!
HERE, I'LL MAKE A CALL...
IT'LL BE LIKE OLD TIMES FOR YOU!
1993
THAT NO-TALENT PUNK REFUSED TO HIRE ME!
AAAH, WHO NEEDS HIM? TV IS A CULTURAL WASTELAND, ANYWAY!
...IT'S THE BARRY BERGMAN SHOW!
I SHOULD HAVE LISTENED TO MY PARENTS!
2002
HI, GANG! IT'S ME, LARRY LEARY!
WHO LET THE RIFF-RAFF IN!
SO?
HUH. THIS "CRAP" I USED TO WRITE WASN'T SO BAD AFTER ALL...
HA-HA!
SCREW YOU, MOM AND DAD!

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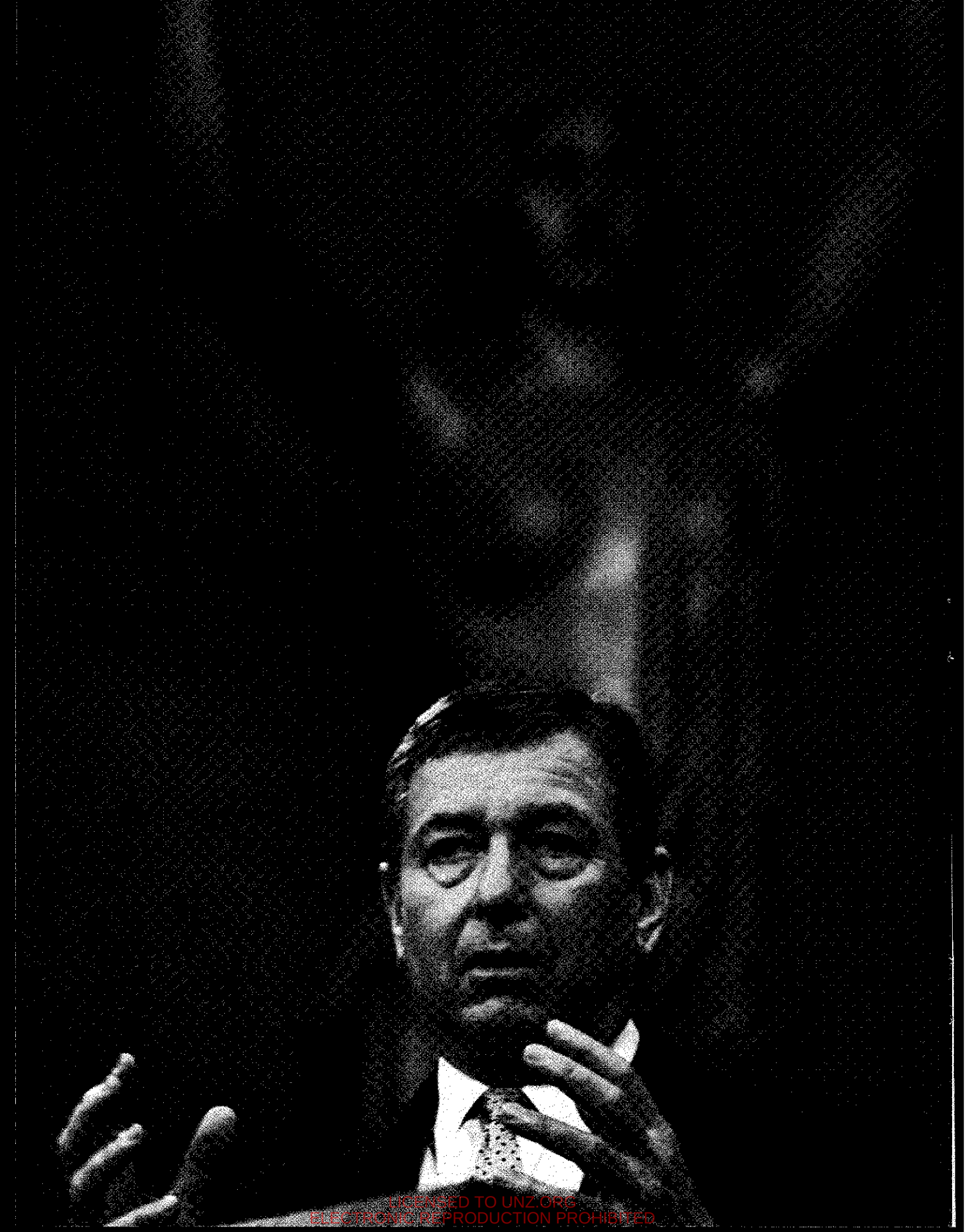

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John Ashcroft's Power Grab

The saga of a troubled—and troubling—attorney general

Brian Doherty

When U.S. Attorney General John Ashcroft was eight years old, his father, J. Robert Ashcroft, took the boy up in a Piper Cub airplane. Then Dad blessed young John with a special treat.

"John, I'd like you to fly this plane for a while," he said.

"I was one awestruck kid," Ashcroft remembers lovingly at the very beginning of his 1998 memoir, *On My Honor: The Beliefs That Shape My Life*. But he was also a lost one: "What do I do?" he shouted to his pa.

"Just grab the stick and push it straight forward."

Which of course sent the plane into a terrifying "bombing-raid dive toward a farm...I lost all sense of time or place as fear gripped my insides."

Turned out it was all just a practical joke. Dad saved them in the nick of time—and, recounts John, "had a good chuckle" at the expense of his naive son.

Was young John mistrustful of his trickster father after such an intense prank? In his autobiography, Ashcroft chooses the high road, completely recasting what might seem a particularly mean bit of joshing as a deliberate attempt to teach him a valuable lesson. The lesson, Ashcroft writes, is that "actions have consequences....In a positive sense, I learned that wherever I was, if I put my hand to something, I could make a difference."

Uh, yeah. The boy in the famous joke, digging through the pile of manure looking for the pony, has nothing on our nation's top cop. The most obvious response to Ashcroft's version of this story is, *What the hell is wrong with this guy?* While it's certainly the type of thing a boy is apt to remember, what would possess a man writing a memoir—meant largely to honor dear old dad—to start his book with this particular anecdote?

The stories we choose to tell on ourselves are, well, telling. Given its place of pride in his book, Ashcroft's father tricking him seems to be his most beloved, or at least most vibrant, childhood memory. Ashcroft, one can infer, believes in something like Tough Love. (Indeed, treating juvenile crooks as adults has been a pet theme through his entire political career.) And if the attorney general, the "nation's top cop," is the symbolic disciplinarian and parental figure for American society, then we're all Ashcroft's kids now—which could mean some harrowing times ahead.

Yet Ashcroft is a far more complicated father figure than most of his enemies grant. They see him in one role only: the stern disciplinarian driven by an unshakable belief that God and he are as one, a man so prudish he can't tolerate unclothed statuary. But the American father-figure template includes many different roles, and Ashcroft has filled more than a few during his public life. At times, he's come across as an obsessive, driven, and ultimately self-destructive tyrant given to fits of rage (think Robert Duvall in *The Great Santini*). Other times, he's an overly earnest goody-two-shoes quick with an uplifting Bible verse (think *The Simpsons*' Ned Flanders). And sometimes, he comes across as a sleepy-brained, bumbling doofus falling into trouble (think *Blondie*'s Dagwood Bumstead).

Especially given the immense power he's holding in post-9/11 America, it's worth contemplating the varied facets of John Ashcroft—and their flaws. He's a religious man at loggerheads with the dominant culture; a politician who has mostly been (despite surface appearances) a failure; and an attorney general who may be turning into something worse than his enemies anticipated—though perhaps not in the way they assumed.

True Believer

In December, *The Weekly Standard*, as staunch a friend as Ashcroft has in the media, did a laudatory cover story on "General Ashcroft," praising the fightin' spirit that 9/11 brought out in the former senator from Missouri. Indeed, Ashcroft is a man at war not simply with Muslim extrem-

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Ashcroft has insisted again and again that "it's against my religion to impose religion on people." At least once, though, he let slip that "I think all we should legislate is morality."

ists, but with secular America. Central to any consideration of him is his religion, which was also one of the reasons, rightly or wrongly, that he was hated and feared by the left long before 9/11. Born in 1942, Ashcroft grew up the dutiful child of a roving Assemblies of God minister who later settled down to run various Bible colleges in Missouri. Grandpa was an Assemblies holy man as well.

The Assemblies of God is the largest Pentecostalist denomination in America, with 2.3 million members in the United States and 30 million worldwide. It was the first centralized religious institution to emerge from the radically decentralized Pentecostal movement that began to sweep America in the first decade of the 20th century. Pentecostals believe that every child of God should be his own minister, imbued directly with the Holy Spirit and the gift of speaking in tongues. Ashcroft is thus that most derided figure on the American religious landscape, the Holy Roller—an actual, serious one. (The notorious Jim Bakker and Jimmy Swaggart, icons of ridiculous religiosity, were both Assemblies preachers.)

Besides speaking in tongues, the Assemblies practice such peculiarities as faith healing. In short, it's the sort of religion that scares cosmopolitan secularists witless. In biblical style, Ashcroft has had himself anointed in oil (Crisco, if that's all that's on hand) upon ascending to political office. He once vowed that were he ever to become president, he would publicly kneel and pray for divine guidance while being sworn in. That's the sort of statement that makes centrist liberals, hardcore lefties, and the odd atheistic right-winger fear Ashcroft as much as he fears God. And the attorney general follows other Assemblies dictates that further place him outside the American mainstream: He's staunchly opposed on religious grounds to drinking, gambling, and even dancing.

Yet he is, in his own straight-laced and traditional way, a radical cultural rebel. Despite his outsider status and the opprobrium it generates, he won't give in. Like a caring though peculiar dad advising against peer-group conformity, he stands against the crowd and is publicly (and by all accounts privately) true to the values of a serious religious conservative with one-and-only-one wife (Janet, a law professor with whom he's collaborated on legal textbooks) and three kids.

He's also hopelessly corny, creating waves of contemptuous mirth all across the Internet, where clips of him singing one of his self-composed gospel songs abound. While a member of the Senate, he and three colleagues formed a vocal quartet, the Singing Senators, to record and perform patriotic and devotional ditties. The group even trekked to that capital of American cornpone hokum, Branson—tellingly located in Ashcroft's home state—to croon with the Oak Ridge Boys.

Ashcroft's squeaky-clean Christian image is built on more than personal habits. People have reported that while being interviewed for jobs by Ashcroft, they were asked if they had ever committed adultery. (One applicant reports being asked if he were gay, a story Ashcroft denies.) He was the first senator to publicly call upon President Clinton to resign over his affair with that woman, Monica Lewinsky. As Missouri governor, he vetoed a Sunday liquor sales bill, signed into law the first Missouri restrictions on underage smoking, restricted rentals of violent movies to minors, and cracked down on casual drug use (even as one of his top aides was exposed by a squealing college buddy as a pothead and coke-sniffer and quietly resigned). As federal attorney general, he has revived the sort of porn prosecutions that languished in the Bill Clinton–Janet Reno era.

Still, Ashcroft is not some backwoods, Holy Roller hick. He is part of a generation of Pentecostals who have engaged the larger world rather than staying within their own separatist institutions. Hence, Ashcroft attended college at Yale and law school at the University of Chicago. "Ashcroft,"

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notes Edith Blumhofer, a historian at Wheaton College who has written several books on the Assemblies, "was brought up in what was in some ways a conservative Assemblies of God home. His father was very pietist and devoted to prayer. Yet Ashcroft was not told to go to Yale and fight the battle—he went there simply as a student, with no agenda to convert the place." For a devout member of the Assemblies, says Blumhofer, Ashcroft was exceptional in combining the secular and the religious.

The religious historian Grant Wacker once described Pentecostals as having a "jut-jawed stress on personal autonomy," and Ashcroft is the first Assemblies worshipper to be elected either governor or senator. In that context, Ashcroft's political career can be read as an experiment in the assimilation of a peculiarly independent religious tradition into the mainstream.

The experiment can only be described as an awkward semi-success so far. Certainly, John Ashcroft is the attorney general of the United States—a position of considerable power and influence. But by following the dictates of his faith and upbringing, he has crafted a public image that media sophisticates on both coasts see as charmingly goofy at best and dangerously retrograde at worst. Though many Americans agree with him (at least generally) about such matters as God, family, and abortion, Ashcroft has surely noticed that it just isn't OK to the opinion makers to be who he is.

One reason the very Pentecostal Ashcroft has been able to make the headway he has in national politics is because, despite his demonization as a zealot, he's always been more Ned Flanders than Cotton Mather. He's never fought back at his critics with fire and brimstone. Instead, he's more likely to appear in friendly surroundings, such as Orange County, California's famous Crystal Cathedral, and quip, "I always thought that if I was accused of being a strong Christian there was enough evidence to convict me."

As he shifted his political ambitions from Missouri, where serious Pentecostalism is less outré than elsewhere, to the national stage, Ashcroft has insisted again and again that "it's against my religion to impose religion on people." At least once, though, while speaking to the Christian magazine *Charisma*, he let slip that "I think all we should legislate is morality."

Yet it's safe to say that Ashcroft is a gentler kind of modern religious man, a compassionate conservative before it was cool. As senator he worked to allow religious groups to administer federal aid of various sorts. He made new flextime requirements one of his major concerns—so parents can attend Little League games (as, he notes glumly in his memoirs, his traveling preacher father didn't) and take care of scraped knees.

It's worth noting about Assemblies members that, as historian Blumhofer says, "When they look at the world, the divine is quite immanent to them." Practices such as morning prayer meetings in the office are as natural as breathing to Ashcroft, even if they are anathema to a large segment of the populace he is supposed to serve. His strong and oft-expressed religiosity makes for an awkward relationship between Ashcroft the cop and the beat he walks.

Born to Lose

Take a quick look at his résumé, and you'd conclude that John Ashcroft has had a stunningly successful political career. A deeper read, however, suggests something more complicated, a pattern of embarrassing defeats and hollow victories.

After graduating from Yale in 1964 and the University of Chicago Law School three years later, Ashcroft taught law at Southwest Missouri State University—a position of such vital national importance that he used it to get an occupational deferment during the Vietnam War. His political career began poorly with two defeats, the first in a GOP primary while running for Congress in 1972. His respectable 45 percent showing in the primary brought him to the attention of Republican Gov. Kit Bond, who appointed Ashcroft to a midterm vacancy for state auditor. But Ashcroft lost the job when he actually had to face the voters in '74.

It was all uphill from there—at least in Missouri, and at least on paper. In 1975 he was appointed to assistant attorney general of the state. In 1976, he squeaked through a tight election and became Missouri's attorney general. He went on to serve eight years in that post, followed by eight years as governor and then six as U.S. senator.

But Ashcroft's political tenure in Missouri seems more comic-gothic than inspiring or statesmanlike. Events just didn't give him many occasions to rise to. Instead, we see Ashcroft signing the papers to disincorporate the city of Times Beach, victim of a notorious dioxin scare; urging tourists to avoid his state lest they interfere with an ongoing FBI manhunt for neo-Nazis; petulantly refusing for a time to return a commemorative silver dinner set to its rightful owner, the *U.S.S. Missouri*; commuting a death sentence because the condemned man's attorney told the jury, "Why sully your hands with this piece of flotsam?"; being sued on behalf of a fetus whose lawyers claimed was illegitimately imprisoned inside a ne'er-do-well mom; legalizing rape due

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to a clerical error; begging constantly for federal aid as his hapless state was battered by floods and crop failures; and unsuccessfully bowing and scraping on *Donahue* to General Motors execs in the hopes that they would site new auto plants in his state. Colorful, sad, besieged place, Ashcroft's Missouri.

Ashcroft did win something important during his Missouri days, though: a couple of powerful national enemies in the civil rights and women's lobbies. Eventually they would help make his confirmation process for U.S. attorney general so grueling (and so amusing to read about). Accusations of racism have stalked Ashcroft from his days as Missouri's attorney general, when he fought a court-imposed school integration plan—not out of any racist intention, he insisted, but because it placed an unfair tax burden on the people of Missouri.

If his opposition to the school plan issued from his principles, it's less clear what motivated him to block Bill Clinton's appointment of the black Missouri Supreme Court Judge Ronnie White to a federal judgeship. Ashcroft advanced inchoate feelings that White just might be too "activist" and got the entire GOP to go along with him by spreading misleading accounts of White's being soft on capital punishment. In reality, Judge White had voted to uphold death penalty convictions 41 out of 59 times, and almost always voted with the panel majority. So at the very least, there was rank demagoguery behind Ashcroft's campaign against the judge. Speaking at the anti-race-mixing Bob Jones University and giving an interview to the Confederate fan magazine *Southern Partisan*—which he praised for trying to convince Americans that the Confederates were not "giving their lives, subscribing their sacred fortunes and their honor to some perverted agenda"—didn't help Ashcroft's reputation with the civil rights cognoscenti either.

In attempting to deflect accusations of racism, Ashcroft's goofy, hapless Dagwood Bumstead persona comes to the fore. He assures readers of his memoir that his father possessed "the foresight to prevent his son's prejudices at an early age" by playing him Mahalia Jackson records and making him read the left-wing black novelist Richard Wright (while not, Ashcroft assures us, "subscrib[ing] to everything Wright advocated"). A further sign of the Ashcroft family's progressive stance on race is that his parents let black guests rake leaves in the backyard—just as they would any other visitor.

The women's movement has had it in for Ashcroft since he came up with a startling antitrust innovation in the late '70s. As Missouri's attorney general, he sued the National Organization for Women because they were leading a boycott of the state over its failure to pass the Equal Rights Amendment. The boycott, Ashcroft argued, was a "restraint of trade." Get it? The judge didn't either. Ashcroft lost.

His steadfast rhetorical objection to abortion (except to save the life of the mother) and some restrictions on it he either passed or advocated in Missouri (he wanted

Watching the AG

John Ashcroft vs. civil liberties

Brian Doherty

Maybe Attorney General John Ashcroft isn't the greatest threat to individual liberty since the Inquisition. But that doesn't mean he hasn't been alarming so far. Ashcroft initiatives to be nervous about include the following:

• **Those detainees.** It's the apotheosis of frightening government power—the ability to take people away and lock them up without anyone knowing exactly who or precisely why. The facts, as the press has been permitted to ascertain them: Some 1,200 anonymous people have been taken into custody. Most, we are told, are non-citizen immigrants who have committed at least one infraction of a law. (There is barely a citizen who hasn't, of course.) Hundreds have been deported, 327 are reportedly still in custody for immigration violations, and more than 100 have been charged with other criminal violations. The Justice Department and the Immigration and Naturalization Service, both under Ashcroft's supervision, have not responded to Freedom of Information Act requests for information on these mystery prisoners—who they are, what charges they face, and what courts they have appeared before. The ACLU and 18 other organizations sued the DOJ over this in December. In a separate case, Superior Court Judge Arthur D'Italia decided in March that the detainees' identities had to be revealed. The DOJ has appealed.

• **Secret tribunals.** He didn't invent the idea, but Ashcroft has been an enthusiastic supporter of using secret military tribunals for captives related to the war on terrorism. Defenders of those tribunals can come up with no more cogent and reasonable defense for them other than that, hell, under normal American standards of jurisprudence it's just barely possible that the accused might not be found guilty.

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to completely ban *second* abortions, for instance) have also made him a women's movement pariah.

Yet even his enemies typically grant that there's a certain kind of basic personal integrity that we can expect from Ashcroft. He is unlikely to screw the interns, accept bribes, gamble, or, God forbid, dance. Of course, that is the least important kind of integrity to expect from a politician.

When it comes to a more substantive integrity—devotion to core political principles—there aren't very many important ideas that Ashcroft is solid on. He is more likely to adopt specific proposals in an ad hoc, disconnected way. He was for trade sanctions against Sudan because they don't respect religious freedom; yet he later plumped (rightly) to end the Cuban boycott (after earlier supporting it). He was foursquare against national standards for education but insists on them for drug and suicide laws.

Ultimately, Ashcroft's appeal to conservatives seems to be rooted more in his persona and his religiosity than actual conservative legislative achievements. And that appeal has proven pretty thin outside Missouri. Although he won with 64 percent of the vote in his second gubernatorial race and swept every county in his first Senate race, Ashcroft was a nobody on the national stage until Bush tapped him for attorney general. Dating back to the first Reagan administration, Ashcroft had been a perpetual name floating up as someone who *just might* be named attorney general in a Republican administration. Similarly, he was a prominent might-have-been vice presidential candidate for Bob Dole in '96. He ran hard for president through most of '97 and '98 in that "just looking" way, rousing much excitement among the likes of Pat Robertson. But he eventually acknowledged in January 1999 that the support wasn't there.

It hadn't been there earlier in the decade, either, when Ashcroft made a spectacularly weak run for chairman of the Republican National Committee. He'd been term-limited out of the Missouri state house in '93 and was cooling his heels before he could run for Senate in '94. Despite having far and away the most prominent political experience of any of the candidates for chairman, Ashcroft came in third on the first ballot, behind Haley Barbour (then just a former Reagan aide) and current Secretary of Energy Spencer Abraham (then just a former Dan Quayle aide). He was so despondent at his loss that he avoided the traditional stand-on-the-dais-together unity display.

Later, even his home state let him down. In 2000, Ashcroft famously suffered what is surely one of the most humiliating political defeats in American history. Not only did he fail to get re-elected to the Senate—something 80 percent of incumbents pull off—but he lost to a dead man, Democratic Gov. Mel Carnahan. What made the loss all the more dramatic was the longtime rivalry between Ashcroft and Carnahan, who had been lieutenant governor when Ashcroft was Missouri's chief executive.

Bad blood between them flowed long and deep, from the days when Ashcroft went to court to establish that he

• **No suicide solution.** Fair-weather federalist John Ashcroft sent his Justice Department after doctors in Oregon who might, in accordance with state laws, prescribe lethal medicines to terminally ill patients who request them. Ashcroft declared in November his intention to make sure that doctors who did so would lose their license to prescribe any federally controlled drug, effectively putting them out of the doctoring business. In conducting such investigations, he instructed the Drug Enforcement Administration to examine state records about drugs prescribed, information that doctors complying with Oregon's Death with Dignity Act are required to file. Oregon's attorney general sued to stop Ashcroft. The case is now before a U.S. district judge who has stayed Ashcroft's order pending his decision. The question is expected to end up before the U.S. Supreme Court.

• **Drop that joint, granny.** In 1996, California overwhelmingly passed Proposition 215, making marijuana use legal for medical purposes. John Ashcroft is not amused. He has overseen at least eight federal drug busts (not all leading to prosecutions) where a prima facie legitimate Prop. 215 defense could have been made. Among the targets were two high-profile raids of clubs in West Hollywood and San Francisco that helped the seriously ill obtain marijuana. These are arrests that would not have been made under California law.

• **The neighborhood is watching.** In March, Ashcroft announced his intention to spend several million dollars to double to 15,000 the number of civilian "neighborhood watch" participants. Peppering the country with squads of local snoopers looking for suspicious activities almost guarantees a chilly environment for the right to be free of officious, deputized busybodies—a freedom arguably at the center of civil liberties.

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Ashcroft's immediate response to the 9/11 attacks was to sink into a dark Orwellian morass of secret detentions, warrantless wiretaps, and eavesdropping on lawyers.

didn't cede power to his lieutenant every time he left the state. Ashcroft even pettily ended the practice of paying Carnahan a pro-rated higher salary on days Ashcroft was absent. Their Senate election was bitter and mean: If Carnahan tried to insinuate Ashcroft had a race problem, John's boys would distribute old photos of Carnahan in blackface. The Show Me State, indeed.

Then, less than a month before the election, Carnahan's plane crashed, killing the governor, his eldest son, and a trusted aide. When the person who wins Senate elections in Missouri can't serve, the governor—in this case, Democrat Roger Wilson—appoints someone to the vacancy until the next election. Wilson made it clear that he would choose the grieving widow and mother, Jean Carnahan. In the pollster's argot, the late Mel suddenly had no negatives and Jean's mere ability to stride in public purposefully with the ghosts of husband and son hovering nearby was enough to dig Ashcroft's political grave.

There Ashcroft was, then—a small-account politician of no particular achievement or rigor from a difficult little state, repudiated on the national stage and suffering a uniquely stinging political defeat. Yet Ashcroft gallantly chose not to challenge the election, though he had various procedural tacks he could have taken. In his highly praised concession speech, Ashcroft said that "the will of the people has been expressed with compassion" and that he "hope[s] that the outcome...is a matter of comfort to Mrs. Carnahan."

However tough that loss must have been, it must have been even more bruising when, a few months later, the new Sen. Carnahan voted against Ashcroft for attorney general. Mr. Dithers couldn't have humiliated poor, hapless Dagwood any better.

Angry Attorney General

It might have seemed that Ashcroft was politically dead after losing to the late Carnahan. But as he wrote in his memoir, for every crucifixion there's a resurrection. President George W. Bush rolled away the stone by nominating Ashcroft for attorney general, and even the doubting Thomases in the Senate hearings had to recognize that Ashcroft had arisen. Even then, though, Ashcroft was not a first choice, but a compromise sop to the GOP's religious right wing. His confirmation battle was brutal even by contemporary standards, and a lifetime's worth of political foes portrayed Ashcroft as a freakish chimera of Anita Bryant, Torquemada, and George Lincoln Rockwell. His own performance in the hearings seemed to hurt, not help, his cause. Analysts predicted at the beginning of the hearings that a good 80 of his erstwhile colleagues would support him, but he eventually squeaked through by only four votes, 52–48.

As he launched the newest phase of his career, Ashcroft first played the role of the dad with the soft touch, shuffling along, doing whatever it takes to keep the family happy. He seemingly scheduled every day around publicly kissing up to the people who hate him most. He was no racist, by God, so he said he was going to make ending "racial profiling" his major concern. (Post-9/11, of course, profiling is back with a vengeance, and with a new target about whom no one seems upset.) Does Ashcroft's religion think homosexuality is an abomination? Sure, but that wouldn't stop him from meeting with the Log Cabin Republicans. Despite his consistent opposition to racial preferences while a legislator, Ashcroft's Justice Department filed an enthusiastic defense of such programs in the *Adarand* case—a case that Sen. Ashcroft particularly liked to moan about. The staunchly anti-abortion Ashcroft ordered federal marshals to protect abortion doctors, and his DOJ collared the killers of abortionists in France.

We cannot presume to know what a politician really thinks, even, or perhaps especially, from listening to what he

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says. So we must imagine how the long series of defeats and disappointments—and the constant attacks from the country's dominant culture—must have burned in Ashcroft's psyche before 9/11. Ashcroft's immediate response to the attacks was to sink into a dark Orwellian morass of secret detentions, warrantless wiretaps, and eavesdropping on lawyers. Meanwhile, he instructed his charges at the Department of Justice to do whatever was legally possible to ignore and stonewall Freedom of Information Act requests. It's irresistible to wonder if the post-9/11 Ashcroft is a long-suffering, go-along-to-get-along dad who finally snaps, yanks up his trousers tight, and stomps forth, insistent that he just ain't gonna take it anymore. The days of pushing around Big John Ashcroft are over. Round up the Arabs and convene the military tribunals. And no, Mr. Liberal Media, I *won't* tell you who I've got locked up over here.

In prepared statements—not unscripted press conference bluster—Ashcroft famously warned his critics that they are essentially traitors. "Those who scare peace-loving people with phantoms of lost liberty," he inveighed before Congress, "your tactics only aid terrorists." He needed only to add "and comfort" to his statement to charge dissenters worried about infringements on civil liberties with the constitutional definition of treason.

The right-wing media are still loyally on his side. *National Review*'s Jonah Goldberg wrote a painful syndicated column excoriating the liberal media for their "canards" about Ashcroft. It centered on the notion that since Ashcroft didn't use the *word* traitor it is completely unfair to characterize that statement as saying such. "So now Ashcroft is calling people 'traitors'? Go back and read what he actually said," Goldberg instructs of the quote above. "He didn't say anyone who questions the government is wrong, let alone a traitor." Sure—and calling someone a "long-eared, slow, patient, sure-footed domesticated mammal" isn't the same as calling him an ass.

In any case, it is surely no small matter, even during wartime footing, that Ashcroft has ordered the detention of hundreds of people without making public their identities or the charges they face. This is not simply an affront to the detainees, but to all of us. We deserve transparency from our government and justice that acts according to settled and traditional rules—even toward immigrants without full constitutional protections.

To the delight of small-government mavens, Ashcroft once averred, "We are here to make government smaller, not larger. We are here to uphold personal freedom and responsibility, not...construct an even bigger Nanny State to micro-manage our lives." Yet he has proven that his conservative side trumps any alleged libertarian leanings, even when the topic is completely unrelated to the war on terrorism.

He's spearheaded the Drug Enforcement Administration in actions against people in states that have passed liberal laws on medical marijuana and assisted suicide. Despite his years in state government talking up the blessings of federalism, Ashcroft has proven he barely meant a word of it. As the Cato Institute's constitutional expert Roger Pilon puts it, "one can understand that the executive branch's job is to see that the laws be faithfully executed. At the same time we all know that discretion is a key element of the prosecutorial function." The attorney general's supporters try to rescue him from charges of hypocrisy by saying it's his job to enforce the law; but where he chooses to aim his resources is up to him, and his prosecutorial indiscretions mark him as a hypocrite on states' rights.

And elsewhere. Sen. Ashcroft was a firm defender of Internet privacy. Of the Clipper Chip and other surveillance features the government sought to build into computers and communications hardware, he said that "individuals will be outraged when they understand that the administration wants to hand the FBI access to your private communications." But Attorney General Ashcroft has enthusiastically pushed for and embraced USA PATRIOT Act provisions that give increased authority for warrantless Internet taps.

Of course, these ideas have long been in play. They're not Ashcroft's personal new wave of tyranny. As the Electronic Frontier Foundation's Lee Tien, a fan of Ashcroft's senatorial stance toward electronic privacy, says, a lot of it is the hat he's wearing as attorney general in a time of crisis. But he isn't wearing it well. Even in non-terrorism issues, Ashcroft shows a peculiar tone-deafness to First Amendment liberties. His Justice Department is behind the vindictive assault on journalist Vanessa Leggett, who had been jailed for nearly six months for not turning over notes relating to a murder to a grand jury, a civil contempt charge. Ashcroft's DOJ had threatened her with the possibility of a criminal contempt charge for the same thing—potentially adding years in jail to the months she's already languished. Then in January the DOJ went ahead and indicted the accused murderer in question on federal charges related to the same murder for which he's already been acquitted by the state of Texas—without using Leggett's evidence, and raising disturbing double jeopardy questions. (Leggett still fears being subpoenaed in that case.) If Ashcroft hasn't yet lived up to the worst fears of his foes, he seems more than

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Ashcroft has proven that his conservative side trumps any alleged libertarian leanings, even when the topic is completely unrelated to the war on terrorism.

willing to let civil liberties fall by the wayside if he thinks there's any excuse for it.

Reckless Pilot

There were areas, like abortion and civil rights, where his foes feared his personal beliefs would shape his law enforcement. So far, that seems not to be the case. Anywhere his beliefs might lead toward less enforcement of laws, they have had no effect at all. Just as the death-penalty-hating Janet Reno signed many a federal death warrant, Ashcroft will not be making his personal preferences the law of the land.

But he is known, as one conservative activist who has worked with DOJ officials under Ashcroft told me, for being "good in a chameleon-like way at representing his constituencies within conservatism." That's the best way to explain the one thing he's done as attorney general that has lived up to liberal fears—and libertarian hopes—about him: In a May 2001 letter to the National Rifle Association, he stated unequivocally that he considers the right to bear arms an individual one.

Having stated that, he has shown it in only two rather restrained ways. First, he reduced the time that records of gun background checks are kept from 90 days to one. Second, he extended one procedural courtesy to those mysterious, anonymous, locked-away aliens: He refused to check whether they had made gun purchases, agreeing with FBI lawyers that such an investigation went beyond the statutory purpose of the Brady Bill. As Eric Sterling of the Criminal Justice Policy Center says regarding Ashcroft's rhetoric on Second Amendment rights, "It doesn't clarify any federal policy and it doesn't give guidance to the ATF or FBI. It ends up being a political sop to a very powerful political interest."

So his pro-gun statements, as revolutionary as they may seem on the surface, merely maintain the status quo. His admirers are reinforced in their admiration, his enemies are reassured he is everything they hate him for, and the law basically stays the same.

For all his flaws and foibles, Attorney General Ashcroft has his hand on the control stick of the Department of Justice. He is a man whose upbringing and beliefs place him at odds with the dominant cultural elite, who dog and question his every move and decision. He's a man who has occupied many offices with little to show for it all except one huge, unique humiliation—after which he has been thrust into a position of great legal power in a time when the country is uniquely ready to roll over to authority. Given his Assemblies of God background and its concomitant sense of the divine in the mundane, it's impossible to think that (though he'd never admit it to a secular press) Ashcroft isn't feeling that it's part of God's providence that he's attorney general during a time of national crisis and panic. That it's an occasion that Ashcroft, the stern and firm father figure, should rise to.

Which may well be reason to worry. Constitutionalists view the attorney general's job as representing the people of the United States and their Constitution. Ashcroft seems to think differently. His policies to date show it, and so do some telling words. When asked to defend one of his actions as Missouri's attorney general during his confirmation hearing, he noted, "When the state is attacked, I think it's important to expect the attorney general...to defend the state." This has been the alarming philosophy behind almost all of his post-9/11 decisions and pronouncements. His power as attorney general may well be, to him, as reckless and out of control as that Piper Cub he remembers so strongly from his childhood.

But this time, we're all stuck with him in the pilot's seat. ▪

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Who says we are winning the $19 billion-a-year drug war?

- New drugs and more dangerous forms of the old drugs are widely available, e.g. crack and methamphetamine.[1]

- Adolescent drug use has been increasing since 1990.[2]

- The age at which people first try heroin, cocaine, and marijuana is constantly dropping because there are so many new users.[3]

- The price of heroin and cocaine is at its lowest point in 20 years and the purity of both drugs is at near record levels.[4]

- Overdose deaths and mentions of drugs in hospital emergency rooms are at record levels.[5]

- Bans on the sale and availability of clean syringes have added significantly to the spread of HIV/AIDS.[6]

Who says we're winning . . . other than frightened politicians, ideologues, and people who make their living from prohibition?

Prohibition. It still doesn't work.

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The Clone Wars

A **reason online** debate

Gregory Stock and Francis Fukuyama

WHAT IS THE CASE for allowing genetic and other biological manipulations with the potential to change human beings? As stem cell research, cloning, and other technologies develop, perhaps no other question is more central to our future as a species—and perhaps no other question is as hotly contested.

In the wake of the first meeting of the President's Council on Bioethics and as Congress considered new legislation on the matter, we invited two of the major players in the field to debate the issue on **reason**'s Web site. Gregory Stock, who makes the affirmative case, is director of the Program of Medicine, Technology, and Society at the University of California at Los Angeles School of Medicine. He is also the author of the new book *Redesigning Humans: Our Inevitable Genetic Future* (Houghton Mifflin). Arguing against genetic and biological manipulations is Francis Fukuyama, professor of international political economy at the Paul H. Nitze School of Advanced International Studies of Johns Hopkins University. He is the author of *Our Posthuman Future: Consequences of the Biotechnology Revolution* (Farrar, Straus & Giroux).

The debate unfolded over the week of March 18–22, with each participant responding within hours of the other's posting. Readers interested in more information can visit www.reason.com/biclone.shtml, which includes links to **reason**'s voluminous coverage of cloning and biotechnology. Of special interest is "Criminalizing Science," in which a transpartisan coalition of thinkers and commentators respond to a left-right alliance to outlaw "therapeutic cloning" and stigmatize genetic research.

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Go Ahead and Clone

Don't cause real damage to assuage phantom fears.

Gregory Stock

THERE HAS BEEN A lot of hand wringing recently about cloning. Considering that not a single viable cloned human embryo has yet been created, that the arrival of a clinical procedure to do so seems quite distant, and that having a delayed identical twin (which is, after all, what a clone is) has limited appeal, why all the fuss?

The fuss arises because cloning has become a proxy for broader fears about the new technologies emerging from our unraveling of human biology. Critics like Francis Fukuyama imagine that if we can stop cloning we can head off possibilities like human enhancement, but they're dreaming. As we decipher our biology and learn to modify it, we are learning to modify ourselves—and we will do so. No laws will stop this.

Embryo selection, for example, is a mere spin-off from widely supported medical research of a sort that leaves no trail and is feasible in thousands of labs throughout the world. Any serious attempt to block such research will simply increase the potential dangers of upcoming technologies by driving the work out of sight, blinding us to early indications of any medical or social problems.

The best reason not to curb interventions that many people see as safe and beneficial, however, is not that such a ban would be dangerous but that it would be wrong. A ban would prevent people from making choices aimed at improving their lives that would hurt no one. Such choices should be allowed. It is hard for me to see how a society that pushes us to stay healthy and vital could justify, for instance, trying to stop people from undergoing a genetic therapy or consuming a drug cocktail aimed at retarding aging. Imposing such a ban requires far more compelling logic than the assertion that we should not play God or that, as Fukuyama has suggested, it is wrong to try to transcend a "natural" human life span.

What's more, a serious effort to block beneficial technologies that might change our natures would require policies so harsh and intrusive that they would cause far greater harm than is feared from the technologies themselves. If the War on Drugs, with its vast resources and sad results, has been unable to block people's access to deleterious substances, the government has no hope of withholding access to technologies that many regard as beneficial. It would be a huge mistake to start down this path, because even without aggressive enforcement, such bans would effectively reserve the technologies for the affluent and privileged. When abortion was illegal in various states, the rich did not suffer; they just traveled to more-permissive locales.

Restricting emerging technologies for screening embryos would feed deep class divisions. Laboratories can now screen a six-cell human embryo by teasing out a single cell, reading its genes, and letting parents use the results to decide whether to implant or discard the embryo. In Germany such screening is criminal. But this doesn't deny the technology to affluent Germans who want it: They take a trip to Brussels or London, where it is legal. As such screenings become easier and more informative, genetic disease could be gradually relegated to society's disadvantaged. We need to start thinking about how to make the tests more, not less, accessible.

But let's cut to the chase. If parents can easily and safely choose embryos, won't they pick ones with predispositions toward various talents and temperaments, or even enhanced performance? Of course. It is too intrusive to have the government second-guessing such decisions. British prohibitions of innocuous choices like the sex of a child are a good example of undesirable government intrusion. Letting parents who strongly desire a girl (or boy) be sure to have one neither injures the resulting child nor causes gender imbalances in Western countries.

Sure, a few interventions will arise that virtually everyone would find troubling, but we can wait until actual problems appear before moving to control them. These coming reproductive technologies are not like nuclear weapons, which can suddenly vaporize large numbers of innocent bystanders. We have the luxury of feeling our way forward, seeing what problems develop, and carefully responding to them.

The real danger we face today is not that new biological technologies will occasionally cause injury but that opponents will use vague, abstract threats to our values to justify unwarranted political incursions that delay the medical advances growing out of today's basic research. If, out of concern over cloning, the U.S. Congress succeeds in criminalizing embryonic stem cell research that might bring treatments for Alzheimer's disease or diabetes—and Fukuyama lent his name to a petition supporting such laws—there would be real victims: present and future sufferers from those diseases.

We should hasten medical research, not stop it. We are devoting massive resources to the life sciences not out of idle curiosity but in an effort to penetrate our biology and learn to use this knowledge to better our lives. We should

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Stock: Biotechnologies stand to revolutionize health care and medicine, transform great swaths of our economy, alter the way we conceive our children, change the way we manage our moods, and even extend our life spans.

press ahead. Of course, the resultant technologies will pose challenges: They stand to revolutionize health care and medicine, transform great swaths of our economy, alter the way we conceive our children, change the way we manage our moods, and even extend our life spans.

The possibilities now emerging will force us to confront the question of what it means to be a human being. But however uneasy these new technologies make us, if we wish to continue to lead the way in shaping the human future we must actively explore them. The challenging question facing us is: Do we have the courage to continue to embrace the possibilities ahead, or will we succumb to our fears and draw back, leaving this exploration to braver souls in other regions of the world?

Sensible Restrictions

There are good reasons to regulate future biotechnologies.

Francis Fukuyama

Gregory Stock offers two sets of arguments against restricting future biotechnologies: first, that such rules are unnecessary as long as reproductive choices are being made by individual parents rather than states, and second, that they cannot be enforced and will be ineffective even if they were to be enacted. Let me respond to each in turn.

While genetic choices made by parents (either in the short run, via pre-implantation genetic diagnosis, or in the more distant future, through germline engineering) are on the whole likely to be better than those made by coercive states, there are several grounds for not letting individuals have complete freedom of choice in this regard.

The first two are utilitarian. When we get into human germline engineering, in which modifications will be passed on to successive generations, safety problems will multiply exponentially over what we today experience with drug approval. Genetic causation is highly complex, with multiple genes interacting to create one outcome or behavior and single genes having multiple effects. When a long-term genetic effect may not show up for decades after the procedure is administered, parents will risk a multitude of unintended and largely irreversible consequences for their children. This would seem to be a situation calling for strict regulation.

A second utilitarian concern has to do with possible negative externalities, which is the classic ground for state regulation, accepted by even the most orthodox free market economists. An example is sex selection. Today in Asia, as a result of cheap sonograms and abortion, cohorts are being born with extremely lopsided sex ratios—117 boys for every 100 girls in China and at one point 122 boys for every 100 girls in Korea. Sex selection is rational from the standpoint of individual parents, but it imposes costs on society as a whole in terms of the social disruption that a large number of unattached and unmarriageable young males can produce. Similar negative externalities can arise from individual choices to, for example, prolong life at the cost of a lower level of cognitive and physical functioning.

A further set of concerns about the ability to "design" our children has to do with the ambiguity of what constitutes improvement of a human being, particularly when we get into personality traits and emotional makeup. We are the product of a highly complex evolutionary adaptation to our physical and social environment, which has created an equally complex whole human being. Genetic interventions made out of faddishness, political correctness, or simple whim might upset that balance in ways that we scarcely understand—in the interest, for example, of making boys less violent and aggressive, girls more assertive, people more or less competitive, etc. Would an African American's child be "improved" if we could genetically eliminate his or her skin pigmentation?

The final issue concerns human nature itself. Human rights are ultimately derived from human nature. That is, we assign political rights to ourselves based on our understanding of the ways members of our species are similar to one another and different from other species. We are fortunate to be a relatively homogenous species. Earlier views that blacks were not intelligent enough to vote, or that women

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were too emotional to be granted equal political rights, proved to be empirically false. The final chapter of Greg Stock's book opens up the prospect of a future world in which this human homogeneity splinters, under the impact of genetic engineering, into competing human biological kinds. What kind of politics do we imagine such a splintering will produce? The idea that our present-day tolerant, liberal, democratic order will survive such changes is far-fetched: Nietzsche, not John Stuart Mill or John Rawls, should be your guide to the politics of such a future.

Stock's second set of arguments is based on his belief that no one can stop this technology. He is certainly right that if some future biotechnology proves safe, cheap, effective, and highly desirable, government would not be able to stop it and probably should not try. What I am calling for, however, is not a ban on wide swaths of future technology but rather their strict regulation in light of the dangers outlined above.

Today we regulate biomedical technology all the time. People can argue whether that technology is properly regulated and where exactly to draw various regulatory lines. But the argument that procedures that will be as potentially unsafe and ethically questionable as, say, germline engineering for enhancement purposes cannot in principle be regulated has no basis in past experience.

We slow the progress of science today for all sorts of ethical reasons. Biomedicine could advance much faster if we abolished our rules on human experimentation in clinical trials, as Nazi researchers did, and allowed doctors to deliberately inject infectious substances into their subjects. Today we enforce rules permitting the therapeutic use of drugs like Ritalin, while prohibiting their use for enhancement or entertainment.

The argument that these technologies will simply move to more favorable jurisdictions if they are banned in any one country may or may not carry weight; it all depends on what they are and what the purpose of the regulation is. I regard a ban on reproductive cloning to be analogous to current legislation banning incest, which is based on a similar mix of safety and ethical considerations. The purpose of such a ban would not be undermined if a few rich people could get themselves cloned outside the country. In any event, the world seems to be moving rather rapidly toward a global ban on reproductive cloning. The fact that the Chinese may not be on board shouldn't carry much weight; the Chinese also involuntarily harvest organs from executed prisoners and are hardly an example we would want to emulate.

I don't think that a set of regulations designed to focus future biomedicine on therapeutic rather than enhancement purposes constitutes oppressive state intervention or goes so far beyond the realm of what is done today that we can declare its final failure in advance. By Greg Stock's reasoning, since rules against doping in athletic competitions don't work 100 percent of the time, we should throw them out altogether and have our athletes compete not on the basis of their natural abilities but on the basis of who has the best pharmacologist. I'd rather watch and participate in competitions of the old-fashioned kind.

Biotech Tyranny

Banning enhancement would be massively invasive

Gregory Stock

I HAVE NO PROBLEM with attempts to address serious externalities that arise from otherwise harmless personal activities. But if government does not bear a heavy burden of proof when justifying such intrusions into our lives, it can employ vague arguments about social harm to take away our basic freedoms. Francis Fukuyama would push us toward just such intrusions by erecting a powerful regulatory structure charged with ensuring the ethical and social desirability of future technologies.

Fukuyama is so suspicious of change in general and new technology in particular that he won't even acknowledge the desirability of allowing people to use safe and beneficial interventions that would almost certainly improve their lives. He will admit only that if a technology is "safe, cheap, effective, and highly desirable," government "*probably* [my emphasis] should not try" to stop it. If he won't even embrace technologies that meet this high threshold, he would never allow the far more problematic possibilities of the real world. But facing such possibilities is precisely what has improved our health and raised our standard of living so greatly during the last century.

Fukuyama speaks of safety, but his reluctance about even safe and highly desirable technologies suggests that his major concern is neither safety nor aberrant misuse. Moreover, he admits that these dangers are well covered by existing agencies and institutions. He makes his primary focus explicit in his book when he complains that the Food and Drug Administration is charged only with establishing "safety and efficacy," while we need institutions that can look at ethical consequences.

For the most part, Fukuyama is vague when it comes

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Fukuyama: It seems pretty clear to me that if parents, including ones who are perfectly accepting of gays today, had the choice, they would select against their children being gay.

to precisely what we should prevent. This may be good strategy, because notions of safety, caution, and minimized externalities are so appealing. But it is deceptive because it is in the details that the rubber meets the road.

In fairness, Fukuyama is specific about banning human cloning, which in today's climate is about as risky as coming out for motherhood. His reasoning here is faulty, however. To liken a blanket ban on reproductive cloning to a ban on incest is not even fathomable if one considers the cloning of a deceased child or someone other than the parent. But as I said, cloning is a sideshow.

A more interesting situation is sex selection. I argued that in the U.S. such selection—which can be done by sorting sperm, so that no embryos are destroyed—is innocuous. Sex selection does not harm children; indeed, it likely benefits them when a child of the "wrong" sex would seriously disappoint his or her parents. Fukuyama brings up the lopsided sex ratio in China, but this does not justify regulating the practice here, where such imbalances do not arise from the practice. Moreover, the problem in China is hardly an argument for government regulation, since sex selection there has long been illegal. Indeed, government regulation in China—namely, its one-child policy—exacerbates the problem of gender balance by pushing parents who want a boy toward aborting a girl, since they can't try again. Fukuyama opposes sex selection here and has proposed the formation of a review board like the one in Britain that has barred this procedure. But does he have anything better to offer than a fear that the practice would be a step down a slippery slope? If he sees a serious externality to sex selection in the U.S., it would be worth hearing about.

In response to my comments about the obvious appeal and benefit of future anti-aging medications, Fukuyama points out that "negative externalities can arise from individual choices to...prolong life at the cost of a lower level of cognitive and physical functioning." This is true, but it is a frightening basis for legislation (as opposed to decisions regarding government funding). I shudder to think about regulatory boards tasked with balancing the additional years that an individual seeks against the social cost of those years. To see the peril, we need only apply Fukuyama's logic to medicine generally.

If he does not want to allow interventions to slow the onset of aging and bring longer lives of relative health (though presumably not matching the vitality of youth), then why not block all treatments for the aged and debilitated? Their extra years are a net cost, and withholding medical treatment for those over 65 would work wonders for our ailing Social Security system. It isn't much of a step to go even further and block medical interventions that save accident victims who suffer crippling injuries.

Fukuyama no doubt feels that a sharp line between therapy and enhancement will avoid such perversions, but this distinction does not stand up to scrutiny. This line will increasingly blur in the years ahead. Anti-aging interventions, for example, fall in a large realm that is best labeled therapeutic enhancement. If we could gain an extra decade by strengthening our immune system or our anti-oxidation and cellular repair mechanisms, this would clearly be a human enhancement. But it would also be a preventive therapy, because it would delay cardiovascular disease, senile dementia, cancer, and other illnesses of aging, which we spend billions trying to treat.

Banning enhancement from sports competitions can obviously be justified as a way of enforcing the agreed-upon rules of the game. But neither Fukuyama nor our democratic political institutions have a recognized right to set the rules of life. Outlawing a whole realm of benefits that are not injuring others is not just impractical; it is tyranny. Enhancement is not wrong, and when such possibilities become safe and reliable large numbers of people will seek them. Fukuyama is right about the ambiguities of "improvement," but I have not suggested some grandiose government project that seeks human perfection. I have spoken only of freely made parental choices, and I argue that such choices are likely to lead toward great diversity.

I do not argue that parents need no oversight in the use of advanced technology for the conception of children, just that it should be minimal, should address real rather than imagined problems, and should be concerned with the

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child's safety rather than the social order or the personhood of embryos. When it comes to children, I trust the judgment of individual parents more than that of political or judicial panels. Most parents are deeply concerned about the welfare of their own children, whereas such panels are composed of individuals who are more oriented toward larger social and philosophical concerns than the well-being of particular individuals.

Upholding Norms

Our laws should be updated to take account of technological advances.

Francis Fukuyama

I THINK GREG STOCK has misunderstood a couple of the points I was trying to make in my initial response. The issue with regard to sex selection is not that it would be a serious problem in this country; it's possible now, after all, but not widely practiced. The point is that individual choice coupled with the spread of cheap biomedical technologies can quickly produce population-level effects with serious social consequences. In other words, the problem with eugenics is not simply that it is state-sponsored and coercive; if practiced by enough individuals, it can also have negative consequences for the broader society.

I suspect that if the U.S. ever gets into something like this in the future, it will have to do with potential "enhancement" targets other than sex. One I speculate about in my book is sexual preference: It seems pretty clear to me that if parents, including ones who are perfectly accepting of gays today, had the choice, they would select against their children being gay, if for no other reason than their desire to have grandchildren. (Contrary to Stock, by the way, gays can't reproduce, so I'm not quite sure how they'd do germline intervention to produce gay children.) The proportion of gays in the population could drop quite dramatically, and I'm not at all sure that society as a whole (let alone gays as a persecuted minority) would be enhanced as a result.

Governments can intervene successfully to correct individual choices like these. The severe sex-ratio imbalance in Korea that emerged in the early 1990s was noticed, and the government took measures to enforce existing laws against sex selection so that today the ratio is much closer to 50-50. If the government of a young democracy like Korea can do this, I don't see why we can't.

The reason I noted that life extension coupled with diminished capability can create negative externalities was not to suggest that we should ban or regulate such procedures. Stock is perfectly right that we already have adopted a lot of medical innovations that produce this tradeoff, and that we can't stop future advances for this reason. The reason this is an important issue is that in contemporary debates over stem cells and cloning there is an unquestioned assumption that anything that will prolong life or cure disease is obviously desirable and automatically trumps other ethical concerns.

This is not obvious to me. Anyone who has walked around a nursing home recently (as I have) can see that past advances in biomedicine have created a horrible situation for many elderly people who can't function at anything close to the levels they'd like but who also can't die. Of course, new advances in biotechnology may provide cures for degenerative, age-related diseases such as Alzheimer's or Parkinson's, but the research community is in effect just cleaning up the mess it created. So when we are balancing near-term rights and wrongs, the argument that more medical advance is necessarily good needs to be treated with some skepticism. At the hearing on Florida Republican Dave Weldon's bill banning cloning last summer, a representative of a patients advocacy group said the baby boomers were getting older and desperately needed cures for a variety of diseases with which they would soon be afflicted—as if research cloning would prevent them from ever having to die. If you want a real nightmare scenario, consider one in which we double life spans but increase periods of debility by a few decades.

Stock is correct in saying that much of my interest in having new regulatory institutions in place has to do with ethical and social consequences of new technology and not simply safety. States intervene all the time to shape norms and produce certain social outcomes. Incest is an example, and it seems to me a very apt analogy to reproductive cloning. Of course, you can find sympathetic situations where an individual might want to clone, say, a dead child. But you can also find sympathetic situations where you might want a brother and sister to marry and have children (e.g., they have grown up apart, have no dangerous recessive genes, etc.).

But the fact that there are certain sympathetic cases does not mean that society would be better off without a ban on incest. The possible benefits of cloning need to be balanced against social harms. Consider the following scenario: A wife decides to clone herself because a couple cannot otherwise have children. As their daughter grows up to be a teenager, the husband will find his wife growing older and

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Stock: Outlawing a whole realm of benefits not injurious to others—mainly enhancements—would be tyranny.
Fukuyama: There will be a basic social divide between the enhanced and the unenhanced.

less sexually attractive. In the meantime, his daughter, who will be a physical duplicate of her mother, will blossom into sexual maturity and increasingly come to resemble the younger woman the husband fell in love with and married. It is hard to see how this situation would not produce an extremely unhealthy situation within the family; in a certain number of cases, it would lead to incest.

Stock is using a rhetorical ploy in suggesting that I am recommending new, tyrannical government intrusion into private lives. Rather, I am recommending an extension of existing institutions to take account of the new possibilities that will be put before us as a result of technological advance. This may result in regulation irksome to industry and to certain individuals, but it will be no more tyrannical than existing rules banning incest or, in the case of the Koreans, banning sex selection. All societies control social behavior through a complex web of norms, economic incentives, and laws. All I am suggesting is that the law part of the mix will need to be updated and strengthened in light of what is to come.

Clones, Gays, and the Elderly

Overestimating the threats posed by technology—and underestimating the threats posed by regulation.

Gregory Stock

I'm glad Francis Fukuyama agrees that sex selection here poses no serious threat. To me, this means it should not be regulated. Moreover, we should also hold off on passing legislative protections against other such technologies until actual problems show up. Fukuyama may worry about rapid "population-level effects with serious social consequences," but his example of Korea's success at handling the sex-ratio imbalances that arose there is not an invitation to regulate, but evidence that we can afford to wait.

Outlawing a whole realm of benefits not injurious to others—namely enhancements—would be tyranny. Potent regulatory structures that pass judgment on the morality and social cost of *future* technologies would move us in this direction. Judging from the composition of President Bush's Bioethics Advisory Commission, many potential regulators would be less moderate than Fukuyama and quite willing to abridge people's choices.

Consider Fukuyama's argument about cloning. It is one thing to worry about the obvious medical dangers of so unproven a technology, another to justify a complete ban with stories about a future father's possible sexual attraction for his wife's budding clone-daughter. Kids hardly need to resemble a parent to inspire incest, as many adoptees and stepchildren can no doubt confirm. If we start regulating families on the basis of hypothetical sexual attractions and perversions—and we can conjure ones more lurid and likely than Fukuyama's clone love—we will ultimately damage rather than protect the family. We have laws governing child abuse; let's content ourselves with enforcing them.

As to gays, if there are fewer in the future because of people's choices about the genetics or rearing of their kids, so be it. But I am not at all convinced it would play out that way. Fukuyama asserts that gays can't reproduce, but they do so all the time using donor eggs or sperm, surrogate mothers, and partners of the opposite sex. Moreover, such reproduction will get ever easier. If we want to be sure to maintain our gay population, additional AIDS research would accomplish more than bans on embryo screening.

I'm glad to hear that Fukuyama doesn't oppose anti-aging interventions; I've previously heard him say only that government would be unable to block such enhancements. He is right, of course, that advances in health care bring many challenges, and that the needless prolongation of a dying loved one's pain and decrepitude is nothing to boast about. But my reaction is not to deny the value of the good added years that modern medicine has brought so many of us, but to recognize that we must find better ways for individuals to reach death with dignity when it draws near. Why must so many of our elderly try to squirrel away a stash of lethal drugs in case they might be captured by a medical system that would torture them for their final few weeks or months? The issue of cloning pales alongside this cruelty.

Fukuyama says he is urging only a harmless extension of

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existing institutions. I disagree. The relegation of decisions about human reproduction to a political process typically driven by impassioned zealots on either side would invite disaster. New agencies with the power to project abstract philosophy, social theory, and even religious dogma into family life would be a frightening development. And when lawmakers on Capital Hill start telling medical researchers not to do certain types of embryonic stem cell research because adult stem cells will work just as well, something is very wrong. These legislators are micromanaging a realm they do not understand, assaulting our freedom of inquiry, and ignoring the entreaties of those afflicted with serious diseases. These steps are not small.

Nietzschean Endgame

Self-enhancement and "immense wars of the spirit."

Francis Fukuyama

I THINK THAT ONE of the great virtues of Greg Stock's book is that he is willing to take some risks in predicting what kinds of changes might be in store in the long-run future in terms of enhancement technology. Most people in the scientific community are not willing to speculate out beyond the next five to 10 years. I urge people to read the last chapter of *Redesigning Humans* if you want to understand why I'm worried about biotechnology.

There, Stock suggests a number of things that might happen in a future world in which various forms of enhancement become safe, effective, and inexpensive. Among other things, he suggests that reproduction via sex may disappear altogether as a result of the difficulties of handling artificial chromosomes in vivo. Reproduction could not happen outside a lab. We could freely alter our personalities and moods through a combination of drugs and genetics.

But most importantly, the human race disappears. He suggests that there will be differentiation within our species, and, in effect, new speciation. Some groups of people may decide to enhance their children for musical ability, some for athletic prowess, others for math or literary ability. There will be a basic social divide between the enhanced and the unenhanced, and in the competitive situation that will emerge, it will be difficult for people not to join into this genetic arms race. Moreover, genetic differentiation will become a cornerstone of international politics. If we and the Germans decide not to take part, the Chinese will charge ahead with self-enhancement, and then we as a nation will be challenged to follow suit.

What I don't understand is why anyone thinks that in this kind of world—one in which the existing genetic homogeneity of the human race is being undermined—we will be able to continue to live within the nice, liberal democratic framework that we currently enjoy. Stock argues as if we can presume the continuity of that political world and fully enjoy the technological paradise opening before us, and that the biggest arguments we will have will concern whether we have a little more regulation and less progress, or the reverse.

But as I noted earlier, in this kind of world Nietzsche is the best guide to what politics will be like. What is going to happen to equality of opportunity when a non-musically enhanced child aspires to be a musician, which has become not just the territory of a guild of musicians, but of a subspecies of musicians whose total genetic identity is tied up in that form of life? Why shouldn't the enhanced start demanding superior political rights for themselves, and seek to dominate the unenhanced, since they will in fact be superior not just as a result of acquired social status and education, but of genetic enhancements as well? What is going to happen to international conflict, when other, hostile societies are not just culturally different, but not fully human either?

The fact is that there will be no theoretical or practical reason at that point not to abandon the principle of universal human equality (i.e., the one enshrined in the Declaration of Independence). It is strongly believed in today in part as a matter of faith, but also in part because it is empirically supported. When the principle was enunciated in 1776, blacks and women were not granted political rights in North America because it was believed that they were too stupid, or too emotional, or otherwise lacking in some essential human characteristic to be granted equal rights. This view resurfaced as scientific racism in the early 20th century, and one of the great achievements of our time is that both the empirical doctrine and the politics built on it have been discredited.

So if we are going to embrace this technology and the prospect of human self-enhancement, we ought to do it with our eyes open. We should say, with Nietzsche, that this is a wonderful opportunity because we can finally transcend liberal democracy, and reestablish the possibility of natural aristocracy, of social hierarchy, of the pathos of distance (i.e., the inability to empathize with the suffering of others), and otherwise usher in an era of "immense wars of the spirit."

As I said, I'm grateful that Greg Stock has clarified all of these issues for us. ■

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Cyberspace's Legal Visionary

Lawrence Lessig on the fate of copyrights and computer networks in the digital future.

Interviewed by Jesse Walker

Few intellectuals have influenced the way people think about cyberspace as much as Lawrence Lessig. His first book, *Code and Other Laws of Cyberspace* (Basic Books, 1999), was described by one critic as "a direct assault on the libertarian perspective that informs much Internet policy debate." At the same time, by probing the complicated relationship between "East Coast code"—that is, legislation—and the "West Coast code" that creates the architecture of the Internet, the book changed the terms of the debate, influencing even the people Lessig was criticizing.

Last year's follow-up, *The Future of Ideas: The Fate of the Commons in a Connected World* (Random House), asks what allows innovation to take place online, examining such issues as Napster, software patents, and regulation of the electromagnetic spectrum. By explaining technology to the lawyers and law to the technologists, Lessig has deepened a lot of people's understanding of the Net. Few in the public policy community, for example, have given much thought to the different layers of cyberspace. By contrast, Lessig distinguishes the physical layer (the network's hardware and wires) from the logical layer (the protocols that determine who connects to what) and the content layer (the actual material delivered by the protocols over the wires). To maintain our ability to innovate online, he argues, one must recognize the different relationship public policy has with each layer of the system.

In the meantime, Lessig argues fiercely for preserving an online commons, a concept he distinguishes (but does not completely

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disentangle) from government control. In the wake of the socialist collapse, he writes, "the issue for us will not be which system of exclusive control—the government or the market—should govern a given resource. The question for us comes before: not whether the market or the state but, for any given resource, whether that resource should be *controlled* or *free*."

Lessig, 40, teaches law at Stanford University. He spoke with Associate Editor Jesse Walker in January.

reason: What do you mean by "the commons"?

Lawrence Lessig: A resource is in the commons as long as access to it is not governed by someone's subjective decision. A free resource—free as in zero price—fits that definition. Even a resource that is not zero-priced could be a commons, so long as the terms on which it is offered are completely neutral.

In our culture, whenever we think about *commons*, we instantly affix the idea of *tragedy*. But logically, that can only be true if there is some rivalrousness about that property—if my use of it interferes with your ability to use it the same way. Obviously, intellectual goods are not like that. My use of my poems doesn't stop your use of my poems. So if a commons is nonrivalrous, there can be no tragedy, because my consumption of it does not reduce the amount available to you.

That doesn't mean we don't have to worry about regulating access to those resources. The question is, How do you create enough incentive to produce that resource if everybody can take it without paying for it? That's where excludability becomes important. Once I give a bit of information to the world, it's hard for me to exclude anybody from getting access to that information.

Intellectual property deals with the problem of non-excludability by saying, We're going to give a government-backed monopoly right for a limited term to assure there is enough incentive for people to produce. But it shouldn't be expanded so broadly as to create a false protection for rivalrousness.

reason: Another central concept in *The Future of Ideas* is the end-to-end principle.

Lessig: End-to-end is a design principle that network architects began to articulate around the early 1980s. The idea is that you should place intelligence at the edge of a network and keep the network itself simple.

This made the evolution of the network much more flexible, because it requires a minimum amount of coordination among network owners and users. The way I am trying to develop the concept, it also has very important political consequences: The end-to-end principle enables maximum liberty for users.

As with any principle, this isn't absolute. But if you have two solutions and one is compliant with end-to-end and the other is not, that's a good reason to pick the first.

reason: You believe we're moving away from this principle now.

Lessig: In my first book I was quite pessimistic. It turns out I was not pessimistic enough.

The thing I'm most worried about is what happens as the network moves from an essentially common carriage–regulated medium to pipes that are unregulated and increasingly encouraged to discriminate for or against the content they serve.

That's a prediction of a negative consequence that will come about, and the way to test it is to see what things will resist it. One thing that would resist it is a strong competition among broadband providers, which has not happened. The other possibility would be a different kind of physical infrastructure which would compete with cable and telecom. Wireless could be a powerful competitor in providing Internet access. That would be a reason to be optimistic, if we saw a much greater embrace of that by the Federal Communications Commission.

reason: Most of the concrete policy proposals in *The Future of Ideas*, especially in the areas of intellectual property and spectrum regulation, would loosen government controls. But not all of them. To what extent are you willing to use the government to enforce the idea of open architecture?

Lessig: Not unless necessary.

reason: When do you think it becomes necessary?

Lessig: For example, when the physical layer doesn't have sufficient competition to assure that any particular actor can't behave strategically, from a competitive sense, to corrupt the core of the Internet. Then I think there's a role for the government to compensate for that lack of competition, either through open-access regimes, which have not proved successful, or through some kind of minimal rules about what it means to deliver Internet protocol packets. Companies could build the systems however they want, they wouldn't have to let anybody share their lines, but they'd have to deliver Internet protocol packets in a neutral way.

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reason: Of the economic interests you discuss, shouldn't the owners of the physical level have the strongest property claim? Wires are rivalrous and excludable, and the companies invested a great deal of money laying them.

Lessig: That's a legitimate argument. It's not simple, though, because they laid the wires in the context of protective regulation. The original monopoly deals for cable have been relaxed, of course. And if we're not talking about the Internet, I really have no concern with what cable does on their wires. They can block as much as they want; they can charge whatever they want. What I'm concerned about is what happens when cable adopts the Internet and then develops it in a way that no longer respects the end-to-end protocol. It's polluting the general standard that otherwise was producing a lot of innovation around the Internet.

reason: How useful is it to think of intellectual property as property?

Lessig: If you're a lawyer, it's OK to think of intellectual property as property, because we're trained to use the word *property* in a careful way. We don't think of it as an absolute, perpetual right that can't be trumped by anybody. We understand property rights are constantly limited by public-use exceptions and needs, and in that context we understand intellectual property to be a very particular, peculiar kind of property—the only property constitutionally required to be for limited terms. It's clearly established for a public purpose and is not a natural right.

The real problem is when people use it in the ordinary sense of the term property, which is "a thing that I have that nobody can take, forever, unless I give it to you." By thinking of it as *property*, we have no resistance to the idea of certain great companies controlling "their" intellectual property forever. But if we instead use terms like *monopoly* to describe the control that companies like Disney have over art objects like Mickey Mouse, it's harder to run naturally to the idea that you ought to have your monopoly right forever.

Another problem is the increasing ability of owners of intellectual property to control the actual use of that property. Before the network, if you bought a book, the First Sale doctrine made it impossible for the copyright owner to control what you did with it. Copyright law would not interfere with my ability to give you the book or copy a chapter or read the book a thousand times. All those things are completely within my control, partly because the law guarantees it, but also because the book producer couldn't do anything about it even if he wanted.

As you move to the Internet, though, lots more control is possible. If you look in the permissions for an Adobe eBook, it has the power to control how many times you can print certain sections of the book, whether you can use technology to read the book aloud, whether you can cut and paste sections of the book. All these controls would not have existed without digital technology, because the cost of regulating those uses would have been too high.

The convergence of this technology with rhetoric about property makes it seem increasingly natural that companies should be able to control the use of their "property" just like it seems natural that I should be able to control the use of my car. If I say you can use my car once every month, that means you can use it only once every month; you don't have the right to use it twice a month. But that's never been what intellectual property laws were about.

And now, if digital content has a built-in copy protection system, you aren't allowed to interfere with it, even if the content isn't protected by copyright laws. I

> Censorware is awful not just because it's censoring more than porn but because it censors in a way that there is no opportunity to question the censorship. It's a secret list of damned books.

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have bought a number of eBooks, including Aristotle's *Politics*. Aristotle's *Politics*, of course, was never copyrighted, but the Adobe eBook reader forbids me from printing any pages of the book because the permissions have been set to disable any printing. If I try to interfere with those permissions—if I write a bit of code to disable the limitations that forbid me from printing Aristotle's *Politics* from my Adobe eBook—that would be circumventing an access technology, which under the Digital Millennium Copyright Act is a crime.

reason: What do you think of the argument that the code itself is protected speech?

Lessig: I think code is protected speech, although under standard First Amendment doctrine, regulation of code would be analyzed as content-neutral regulation of speech, as the Second Circuit did in the 2600 case.

This was a challenge brought by 2600, the magazine, which had been prosecuted for posting links to technology to circumvent the encryption that protects content on DVDs. There were basically two claims here. One was that the Digital Millennium Copyright Act was overbroad because it prohibited uses that were perfectly legal. Second was a much more direct challenge to the idea that you could prosecute a magazine for linking to content that might be deemed illegal.

The court of appeals basically rejected both claims. In the context of the more substantial challenge—the challenge to the regulation being overbroad—it applied intermediate scrutiny under the First Amendment, which meant content-neutral regulation was appropriate. It also said there was sufficient government interest that justified the regulation, in spite of the effect on speech. I think that's where the court went wrong. I think the regulation was overbroad.

reason: That seems stricter than the standard in physical space. Paladin Press and Loompanics are allowed to publish descriptions of ways to break the law that are far more serious than de-encrypting DVDs. Yet that's protected and the code is not.

Lessig: I don't think there's a good explanation for the difference.

The view behind the Digital Millennium Copyright Act is that if you don't perfectly protect the world from bad code, it would be the end of intellectual property. If one copy of a work is unencrypted and put on the Web, there'd be no further demand for that product anywhere. As a factual matter, that's just false. Napster didn't result in the end of the CD market. In fact, many people argue that it increased the sales of CDs.

More fundamentally, it's just skewed in its way of dealing with technologies that can be used for both good and bad purposes. There is a technology called the gun, which a number of children every day are killed with. But Smith & Wesson doesn't shake in its boots waiting for the FBI to come knocking at its door, because we have adopted the view that this technology has both good and bad uses, and rather than prosecuting the technology we'll prosecute the bad users. But in the context of copyright, if the technology has good and bad uses, the good ones don't matter.

I was giving a talk at the New America Foundation. Jack Valenti from the Motion Picture Association of America stood up and talked about how awful it was that Stanford allowed a Morpheus server to exist on its network, and what did I think of this obvious technology to enable stealing? I told him I had a Morpheus server running on my machine at work, which was delivering my own content, both audio and text versions of lectures I've given. When I first made this available, the Stanford network police came in and pulled the plug on my server over the weekend because they thought I was engaging in "illegal acts." But I wasn't engaging in illegal acts. It's completely legal for me to distribute content that I have the copyright over, and this technology makes it very easy to do that.

The idea that you would assume that *all* uses are illegal is an overreaction to what I think is a legitimate problem. I'm not in favor of copyright theft, I'm just opposed to shutting down all technologies merely because copyright theft may occur on them.

reason: Do we need software patents?

Lessig: I think of patents as a form of regulation, a government-granted monopoly that should only be granted to the extent that it's doing some public good. That indicates to me that when you start changing patent policy to encourage patents on software, or on business methods, you should be answering the question, Do we have good reason to believe the good that this system will produce outweighs the well-understood costs? The answer is no, we don't. At best the data are mixed, and at worse they provide a pretty good reason to believe that at least with software and business-method patents, there is no substantial increase in the innovation that could outweigh the costs of regulation. Where are the Republicans when you need them?

That doesn't mean I don't believe that no patents

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can justify themselves. There are plenty of contexts where we have reason to believe that they do good—pharmaceuticals are a perfect example.

reason: One of your more controversial claims in *Code* was that the Communications Decency Act, which directly censored "indecent" speech online, was actually less offensive to free speech than privately adopted filtering software.

Lessig: Between no law and good law narrowly tailored to a legitimate state interest in protecting kids from porn, I would favor narrow good law. If we had narrow regulation, you would destroy the market for this bad censorware, and you would have a much better free speech environment than you have right now.

Censorware blocks all sorts of content on the Web, including content critical of censorware. It's awful not just because it's censoring more than porn but because it censors in a way that there is no opportunity to question the censorship. It's a secret list of damned books.

reason: The software companies may want to keep their lists hidden, but in effect they're only secret by government fiat. *The Future of Ideas* describes how people were sued for reverse-engineering a censorware program to discover what was being blocked.

Lessig: There was a lawsuit, and copyright law was used to hide the list. But that's the existing world of censorware. I would much prefer a world where each time you wanted to add on an additional layer of mandatory filtering, we had an opportunity to question it, rather than a world where it develops privately and unreviewably through these technologies of censorship.

A parallel that's a bit more intuitive is spam. We have no effective regulation of spam right now. Congress has been talking about lots of *bad* regulation, which would either ban spam or impose all sorts of stupid requirements that say whenever you send an e-mail you have to make sure it complies with the rules of the recipient institution. But there's also what I think would be perfectly good regulation of spam—essentially, a labeling requirement.

Because we don't have that regulation, there are all these private solutions to the problem. Some of them are these vigilantes, like the Realtime Blackhole List, who develop lists of e-mail servers that they don't think live up to the appropriate spam policy and then block e-mails coming from those servers, which creates all sorts of costs for providers who now have to decide whether they're going to cave into the spam policy that the Blackhole List wants to impose or if they're going to live up to their own policies. Or they encourage the development of these highly complicated technologies like on Outlook for filtering a bunch of junk folders on the basis of routines that are themselves never public.

Both of those would be rendered unnecessary by a rule that effectively said you needed to label your unsolicited commercial e-mail as spam. If people had to do that, it would be very easy for those who don't want to receive it to chuck it or have the server itself filter it out.

reason: I get a fair amount of spam that is clearly illegal already under the rules governing fraud. How regulable is this realm to begin with?

Lessig: Here again is a lack of creativity on the part of the government. My proposal says label at one end and use a kind of bounty system for enforcement. Take all this energy devoted now to things like the Realtime Blackhole List and turn it to the creative process of tracking down spammers. If you did that, the problem would disappear very quickly.

reason: Isn't there a definitional issue, too? Some people have a broader notion of spam than you do, and that's one reason why you have these different private

The idea that you are going to get lots of civil disobedience against the Digital Millennium Copyright Act is just crazy. You're going to get lots of prosecutions and people going away to jail.

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alternatives. I get unsolicited *non*-commercial e-mail all the time—one man's press release is another man's spam.

Lessig: There will always be definitional problems. There is a constitutional problem with how you'd be able to define the required labeling. But again—and this may be my bias as a lawyer—I think it's much better to have that argument in the open, where a court has to weigh it against public values, than to have it operating secretly in systems I have no way to question. If the Realtime Blackhole List decides it doesn't like the e-mail servers at Harvard and Stanford, you're stuck. Your mail is just chucked off the part of the Internet that subscribes to that service. That's a pretty coercive system to force everybody to comply to their rules, and I just don't presume that their rules are the best rules here.

reason: How would you describe your politics?

Lessig: Fundamentally mixed. You could say confused. I was born a Randian, and I have strong views about the goodness of free markets. There's certain parts of my politics that are more liberal than conservative. I think of myself as a liberal.

reason: When you were interviewed on *Slashdot*, you sometimes seemed angry at that site's community of open-source programmers and advocates. You said they were "political slugs," "pathetically apolitical," and addicted to "irrelevant bickerings." What were you getting at?

Lessig: In a sense I'm trying to shame them into doing something. These people, more than anybody, understand the values built into the Internet. But they are among the least politically active segment of our community, out of libertarianism or just a deep skepticism about the use of government. They just don't want to pay any attention to it, don't have any respect for what government does.

If they were to become more politically active, however distasteful that may be to them, that could begin to put a check on what is achievable by others who have no hesitation about being politically active.

reason: Some of them would argue that they're active in the form of civil disobedience.

Lessig: In a world where civil disobedience was treated with toleration, that might be a good strategy. But we're in a world where disobedience is treated with felony convictions. The idea that you are going to get lots of civil disobedience against the Digital Millennium Copyright Act is just crazy. You're going to get lots of prosecutions and people going away to jail. The cost of disobedience has become too high, and I'm not sure it's a viable strategy anymore.

There's some basic cultural differences here. Many of the people who have great ideas in the *Slashdot* context about the way to run the world—if you put them in Washington, they just don't fit.

reason: Aren't you facing the same problem? Some of the proposals in *Future* are guaranteed to be political non-starters. The chances that Congress is going to adopt five-year renewable copyright terms in this political context are zero.

Lessig: I am not writing because I think it's likely that policy makers will sit down and figure this stuff out right now. I'm more writing about what I think is true, and hoping that eventually a group of people who have the time to think through it will try to do something about it.

Over 15 or 20 years, the movement that Reagan is associated with got the world to think about policy things differently, through many small chips at taken-for-granted assumptions about the world. So eventually it can happen.

reason: How did a lawyer get interested in technology?

Lessig: My first work in constitutional law was in Eastern Europe. There I learned that constitutional law is about trying to set up structures that embed certain values within a political system. Once I started thinking about constitutional law like that, it was a tiny step to see that that's exactly what the architecture of cyberspace does: It's a set of structures embedding a set of values. To the extent that we like those values, we ought to be defending the architecture of cyberspace. To the extent that we're skeptical about those values, we should be asking whether the architecture is justified or not. Either way, the architecture is analogous to the Constitution.

So it was a simple step. Also, the conferences had better coffee. ■

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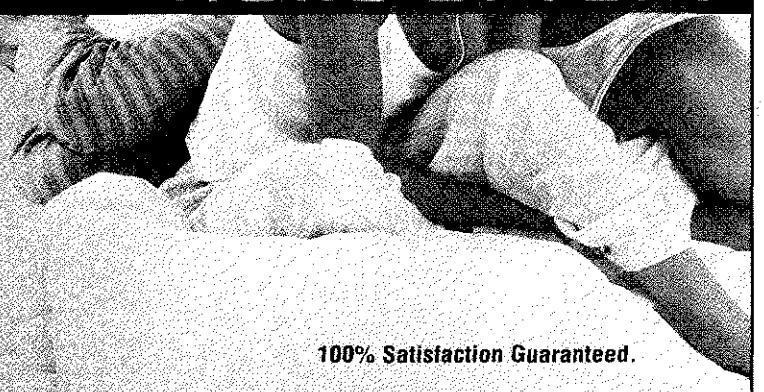

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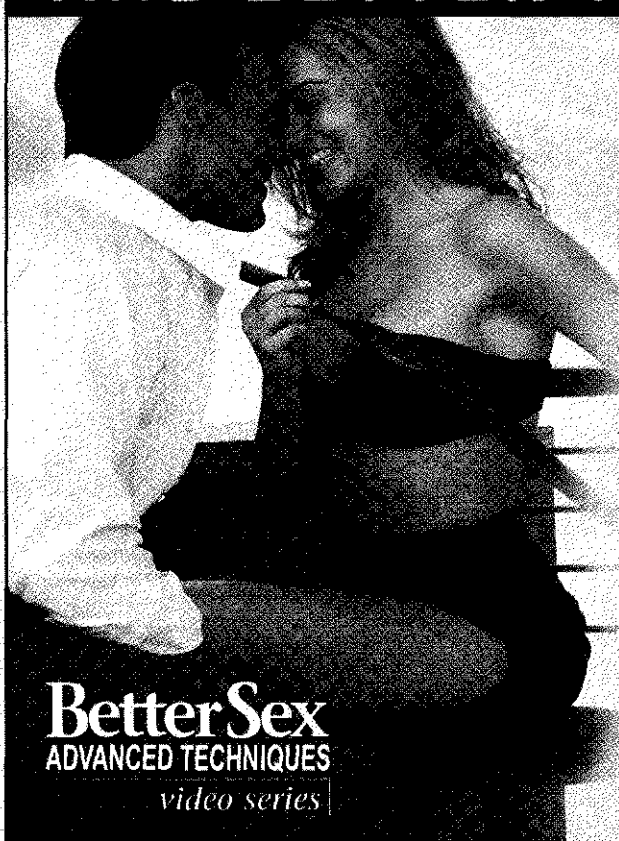

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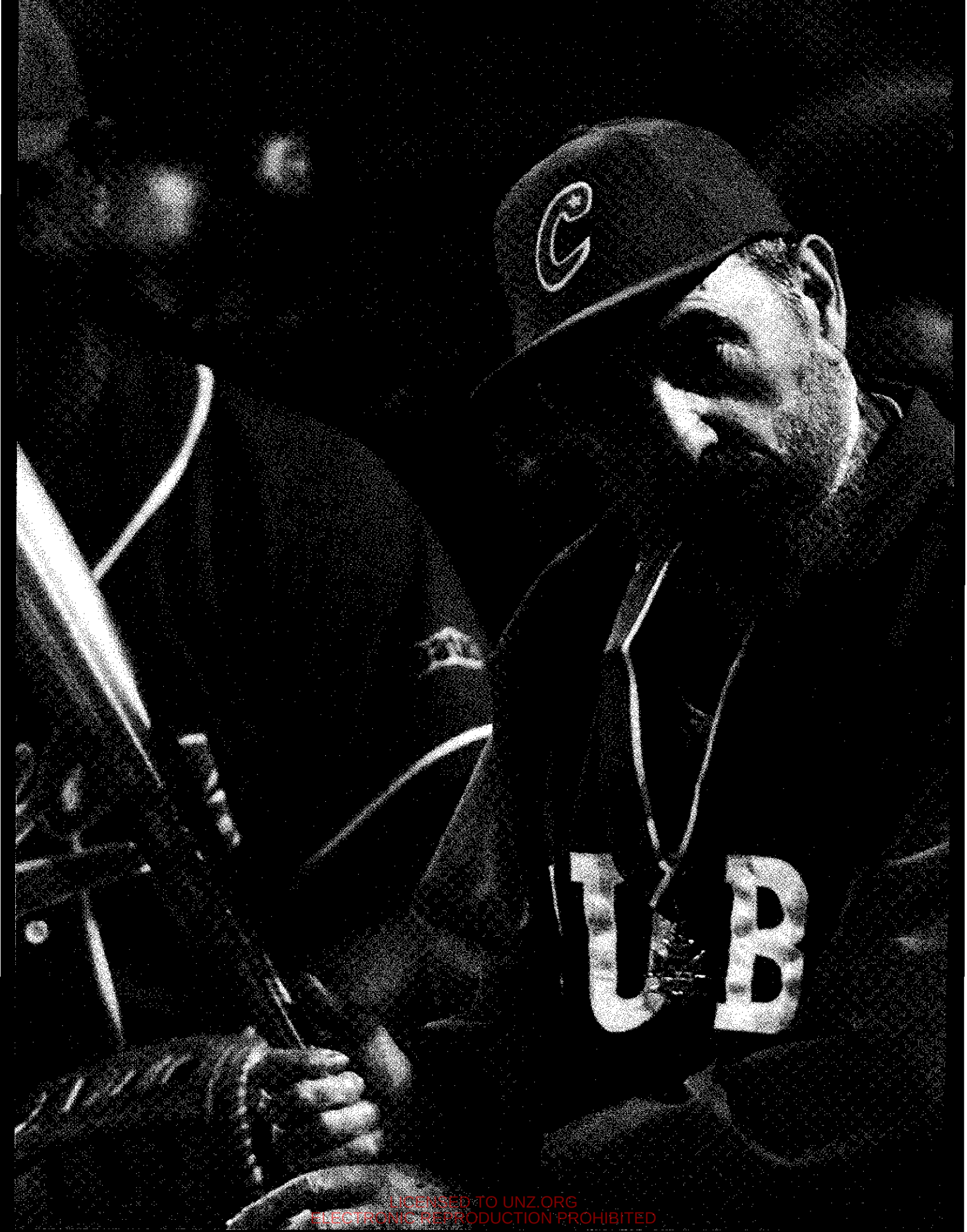

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Foul Ball

How a communist dictatorship and a U.S. embargo has silenced a Cuban historian.

Matt Welch

GEORGE W. BUSH would love to be the president who finally topples the Cuban dictator Fidel Castro. He also probably wouldn't mind winning Florida by a somewhat more comfortable margin in 2004, or seeing his brother Jeb get re-elected governor this November.

With these goals as a backdrop, the Bush administration launched a crackdown last July on Americans who have the bad manners to spend money in Cuba—766 unlucky travelers were fined up to $7,500 for violating the Trading With the Enemy Act in 2001, up from just 188 during Bill Clinton's final year as president. By punishing a tiny fraction of the estimated 200,000-plus Americans who visit the communist island each year, Bush hopes to inflict some kind of indirect damage on the septuagenarian tyrant who has confounded no fewer than eight of his previous U.S. counterparts.

Which brings us to the revered Cuban baseball historian Severo Nieto. Nieto is certainly among the most peculiar and unsung victims of the long standoff between the U.S. and the Castro regime. While perhaps less spectacular and certainly less harrowing than many tales of repression emanating from Cuba, Nieto's story brings to light a sad and often unexamined effect not just of Castro's tyranny but of American policy: how the U.S. embargo, whatever its intention, starves both sides of meaningful and important communication.

The apolitical Nieto, who is a few years El Jefe's senior, basically invented Cuban baseball research in 1955 when he co-authored the country's first-ever baseball encyclopedia, laboriously reconstructing the statistical record of the professional league's first 78 years out of a mountain of newspaper clippings, program scraps, and his own scorecards. Since that dramatic debut, Nieto's been on one of the longest losing streaks in modern publishing history. He has spent a half-century documenting Cuba's tremendously rich professional past in more than a dozen books, but not a single one has been published in any country.

"I tried several times," Nieto told me in his cluttered Havana apartment four years ago, "but they say it's difficult now in Cuba because we don't have any paper." Castro, of course, has been overseeing one of the world's most politically selective paper shortages for decades, reserving precious pulp for odes to Cuba's famed amateur athletic accomplishments while rejecting books that glorify anything about the pre-revolution era.

Cubans aren't the only ones who suffer from this revisionist whitewashing. Americans want access to the archives, because the history of the two countries' professional development is closely intertwined. Indeed, the story of the U.S. national pastime is inextricably linked to Cuba.

Long before Jackie Robinson broke the color barrier (after the Dodgers' 1947 spring training in Havana, incidentally), Cuba was the only place where the best white major leaguers —Ty Cobb, Christy Mathewson, Babe Ruth—played against some of the top black talent of their era. The U.S. Negro Leagues were stocked with Cubans such as Martin Dihigo (a Hall of Famer in four separate countries), and black American stars from Josh Gibson to James "Cool Papa" Bell to Buck Leonard, who spent their winters starring in the competitive winter league in Havana.

In the tumultuous 1950s, the Cuban Sugar Kings served as the AAA affiliate of the Cincinnati Reds in the summer, while winter-league fans could watch the likes of Brooks Robinson and Jim Bunning duke it out with Cuban stars Minnie Minoso and Camilo Pascual. American scouts, led by Papa Joe Cambria of the woeful and heavily Cuban Washington Senators, fought over a talent pool that

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would produce many of the names that defined 1960s and '70s Major League Baseball—Hall of Famer Tony Perez, three-time batting champion Tony Oliva, 1965 MVP Zoilo Versailles, three-time world champion Bert Campaneris, cigar-chomping pitcher Luis Tiant, and 1969 Cy Young Award winner Mike Cuellar.

Even with a flurry of recent books about Cuban baseball, such as Roberto Gonzalez Echevarria's *The Pride of Havana* and Milton Jamail's *Full Count*, the historical record remains a gaping hole, one that Nieto is uniquely positioned to help fill.

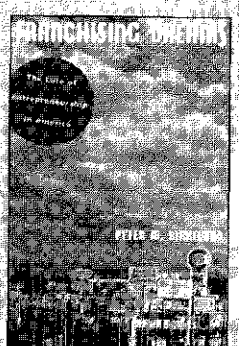
"Very little information is available at this time—it's truly one of the last frontiers of baseball research," says Steve Wilson, senior editor of the McFarland & Co. publishing house, which bills itself as the largest publisher of serious baseball nonfiction. "Nieto's painstaking research over several decades has resulted in a tremendous store of information about this relatively unexplored area of baseball history."

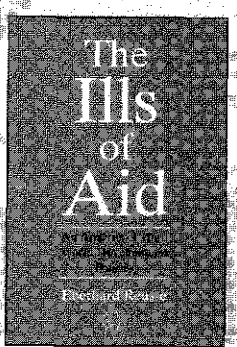
The prospect of getting their hands on Nieto's unpublished treasure trove—which includes such books as *Big League Teams in Cuba*, *Martin Dihigo, El Maestro*, and *Professional Baseball in Cuba, 1878–1961*—has left American baseball historians salivating. Yet none of his work has ever seen the light of day across the Florida Straits. The main obstacle to the consummation has been a heartbreaking communications gap, created by two governments that have been unable to budge from positions of mutual hostility.

It's easy—and not necessarily wrong—to think of the U.S. embargo of Cuba primarily in economic and political terms: We hope to starve Castro and his government to death, or at least to the point of collapse. But over 40 years out, it's transparently clear that people such as Nieto are the ones bearing the burden, impoverished as much by their removal from an international community of cultural and intellectual exchange as by their banishment from economic trade with the U.S. And it is clear, too, that people in the U.S. are paying a price not to be measured in dollars and cents for their government's refusal to allow commerce in ideas and knowledge along with goods.

When I visited Nieto, his most prized possessions weren't his various signed baseballs or ancient game programs, but rather letters from Americans expressing interest in his research. He proudly showed me carefully preserved correspondence

BUSINESS AND SOCIETY





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from Pacific Coast League historian Jay Berman, from historian-authors John Holway, Peter Bjarkman, and Larry Lester, and from the publisher McFarland & Co. When I asked why these encouraging notes hadn't led to anything concrete, he shrugged and motioned to the telephone. "I can't call them," he said.

Most Cubans cannot make international phone calls from their homes. Many can't even *receive* them. McFarland & Co.'s Wilson summarized the problem succinctly: "Mr. Nieto speaks no English and is, we are told, hard of hearing, so we have not tried to communicate by phone. Mail to and from Cuba is unreliable and e-mail nonexistent."

In the end, the only real way for Nieto to communicate with his suitors and potential collaborators is for them to visit him in Cuba. That's especially unlikely to happen any time soon. As the Knight-Ridder news service put it on March 22, "The White House, eager to please Cuban-American voters in Florida who play an outsized role in national politics, plans soon to announce moves to tighten the embargo."

After some 41 years of the embargo's measurable failure to topple Castro, the Bush administration appears to favor the concept of throwing good money after bad. "Just because the policy hasn't yet brought results, I don't think it's an argument for doing away with it," State Department Deputy Director of Cuban Affairs Kevin Whitaker told a Palm Beach public affairs forum in mid-March, according to the *Palm Beach Post*. "I think we've taken enough grief for the Cuba policy over the years that we ought to get something for it."

The State Department's nominee for head of Western Hemisphere Affairs, the Cuban-American Otto Reich, was backed strongly by the powerful anti-Castro Cuban American National Foundation. He was bitterly opposed by Democrats leery of Reich's track record during the 1980s, when he headed up the State Department's Office of Public Diplomacy for Latin America and was charged by the U.S. comptroller-general with conducting "prohibited, covert propaganda activities" at the height of the Oliver North era. Bush avoided a confirmation ruckus by making Reich a recess appointment in January. The Associated Press quoted Bush's new Latin America chief in late March as saying that the best method for stimulating change in Cuba was "not throwing a lifeline to a failed, corrupt, dictatorial, murderous regime."

> Castro has overseen one of the world's most politically selective paper shortages, rejecting books that glorify anything about the pre-Revolution era.

Other recent developments have more ominous implications for freedom in North America itself. In mid-March, James Sabzali became the first Canadian citizen to be tried in a U.S. court for doing business in Cuba. Sabzali and his business partners, Americans Stefan and Donald Brodie, have been charged with more than 70 counts of trading with the enemy between 1992 and 2000, when their Pennsylvania-based chemical company Bro-Tech Corp. allegedly sold more than $2 million in water-purifying resins to Cuban companies. If convicted, the defendants face maximum sentences of life in prison.

Canadian Foreign Affairs Spokesman Reynald Doiron has called the case "objectionable and unacceptable," while a U.S. State Department official shrugged it off: "We understand that there are other countries out there that don't see eye to eye with us on [Cuba], and we do think that's unfortunate."

But it's the new crackdown on simple travel that has affected the most Americans, and attracted the most attention. In order for U.S. citizens to visit Cuba legally, they must be granted a special waiver from the Treasury Department's Office of Foreign Assets Control (OFAC). The license, which was designed for journalists, researchers, students, and business organizations, takes several months to obtain, and OFAC is not at all impressed with personal deadlines. Given the hassle factor, and given that Cuban customs authorities don't stamp Americans' passports, many have found it easier to take their chances and fly to Havana from either Mexico or Canada.

OFAC says it handed out 140,000 licenses in 2001, and estimated another 60,000 Americans traveled to Cuba illegally. The latter figure is probably much too low—of the hundreds of Americans I've met who have traveled to Cuba, only a small percentage received official clearance. Whatever the number of illegal travelers, they are facing increased scrutiny upon their return. Senate hearings in February revealed that a full seven of OFAC's 129 employees have been deployed to hunt down illegal travelers. Lawbreakers like me are sent letters demanding the names and addresses of every place they slept, and a full accounting of any

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money spent, upon penalty of prosecution. (In my case, I gave OFAC a very partial list and said that my non-American wife paid for all our expenses. After that, I never heard anything back.)

"We are trying to minimize the flow of hard currency to Cuba," OFAC Director R. Richard Newcomb testified to the Senate. "Obviously, travel to tourism centers would contribute to hard currency."

The travel crackdown is being prosecuted against the wishes of the House of Representatives, which voted 240 to 186 last July to forbid the Treasury Department from spending money to enforce the ban. The measure was stalled in the Senate, but 34 members of Congress have recently created a new bipartisan Cuba Working Group to challenge the embargo. They're beginning with restrictions on travel.

"This is an issue of freedom," said Arizona Republican Jeff Flake, a leader of the new bloc, at its kickoff press conference in late March. "Every citizen ought to have the right to see firsthand what a mess [Castro] has made of that island."

Rep. William Delahunt (D-Mass.), another leader of the working group, pointed out that the policy is riddled with inconsistencies. "Americans today can travel to Iran, can travel to North Korea," he said. "By my calculations, that's two-thirds of the Axis of Evil."

"I don't think travel restrictions do anything to impede Fidel Castro," Sen. Byron Dorgan (D-N.D.) argued at the February Senate hearings. "It only impedes U.S. citizens."

And, of course, Cubans such as Nieto.

Havana is famously seething with Cubans trying to pump dollars from tourists. Walk through the central city as a blond man in a white T-shirt, and you'll spend your days hearing the hissing "kss-kss!" sound of people trying to grab your attention. It isn't all about money scams, cheap cigars, and prostitutes. Just as often—maybe more often—the approaching strangers and instant friends just want to talk, to practice their foreign languages, to pepper you with questions about the outside world.

Who *really* killed Tupac? What are the lyrics to that Rage Against the Machine song, and what do they mean? How are the people doing in Budapest and Prague now? Do American girls like Cuban men? What do the people think about Bill Clinton? Why does your country keep insisting on the *bloqueo*? How famous is Gloria Estefan? Why isn't Luis Tiant in the Hall of Fame? These are all questions I heard during my month there.

There are many things in Havana to be shocked by: the rotted buildings, the child prostitution, the high price of Cuban beer, the suffocating role of the state in virtually all human transactions. But the thing I found most appalling was the culture of information. Or, more precisely, the lack thereof.

The daily newspaper, *Granma*, is thin, horribly written, and used primarily for toilet paper (what with the shortages and all). The director of Cuba's sports Hall of Fame could not tell me how many members it had. It took me a week of asking dedicated baseball fans to find out how one could obtain a schedule for upcoming games. Periodical libraries—filled with glorious back issues of Havana's handsome and competitive round-the-clock newspapers from before World War II—are off-limits to most ordinary Cubans.

Even though people are generally smart and jaded enough to tune out the government's propaganda, they don't have much of anything to replace it with, except for the odd BBC broadcast—and contact with foreign tourists. Every conversation with an American about the U.S. undermines Fidel Castro *by definition*, because it surely contradicts the banal lies he and his media mouth on a daily basis.

For Nieto, you can see the visceral pleasure and national pride in his eyes when he meets someone who knows even a little about Cuba's baseball greats: legendary players such as the pitcher Dolf Luque, who passed for white and won 194 games in a 20-year Major League career with the Reds, Dodgers, and Giants, and

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managed several of Cuba's most legendary teams; pitcher Jose Mendez ("El Diamante Negro"), who threw 25 shutout innings against visiting big-league teams in 1908; and Cocaina Garcia, a fat little left-handed junkballer who starred both on the mound and in the outfield for decades.

Yet despite his joy at meeting like minds from the United States, Nieto has no way of knowing whether at least *some* of Castro's depictions of Americans as vicious capitalist sharks are true. Like several people who have met Nieto, I implored him to make me a copy of one of his books on a floppy disk (he has an ancient computer), so I could show it around to people at U.S. publishing houses. He clearly wanted to, but said that his son Eduardo, who lives in Spain, kept warning him about getting ripped off by greedy, back-stabbing Americans. At the end of our meeting, he finally agreed to have a relative of his bring me some disks on an upcoming trip to Los Angeles. I never heard from Nieto or his family again.

Other visitors tell similar stories. "Nieto had a friend who attended the Atlanta Olympics, and I was supposed to meet him on the State House steps, but I was late because of traffic and missed him," said baseball historian John Holway, author of the *Complete Book of Baseball's Negro Leagues*. "I left messages for him at the press center and wrote to Nieto to apologize, but he didn't answer."

Jay Berman, a retired California State University at Fullerton journalism professor and a charter member of the Pacific Coast League Historical Society, said that he was finally able to bring back five of Nieto's disks a year ago, which he then sent off to McFarland & Co., the baseball book publisher. "I think Nieto and his work could help finish up a lot of questions," Berman said. "But because he is 79 years old there's a very real question as to how much longer he's going to be able to....That's part of the frustration of the whole thing."

McFarland & Co.'s Steve Wilson says that, after "several years of active, fruitful discussions with Mr. Nieto, primarily through intermediaries including his son," his publishing house is now "hopeful that a book may eventually result." No details are forthcoming, though the company plans to bring out two other major volumes on Cuban baseball history over the next two years.

For now, Nieto just continues to get older, while his historian colleagues in the U.S. become far more wary of traveling to Cuba because of Bush's policy of tightening the embargo yet again.

"I talked with a friend in Havana yesterday," Berman told me. "He says he's well aware of the crackdown and is suggesting to American friends that they stay away until after Jeb Bush is re-elected."

Does the diplomatic standoff leave any room for hope? Members of the Cuba Working Group say yes, and plan to reintroduce a bill overturning the travel ban this spring. Maybe a politician running *against* the Cuban American National Foundation will actually win a Florida election. Perhaps Severo Nieto's long-suppressed works will finally be published in the U.S. and in his native Cuba, to great acclaim—the literary equivalent of a last-chance, game-winning home run. But such moments are rare enough in baseball, let alone in life itself. ■

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Che's Secret Diary

The guerrilla hero as a disgruntled racist

Cynthia Cotts

Mike Tyson's mighty rib cage boasts a sizeable tattoo of the late Ernesto "Che" Guevara, a testament to Guevara's status as *the* marker of subversive cool. It's a safe bet that Tyson hasn't read *The African Dream*, Guevara's recently released "diaries of the revolutionary war in the Congo." Indeed, Che's comments on his African brothers might just send Iron Mike to the nearest laser specialist. "Given the prevailing lack of discipline, it would have been impossible to use Congolese machine-gunners to defend the base from air attack: they did not know how to handle their weapons and did not want to learn," noted Guevara in a typical moment of condescension.

Thirty-four years after Guevara was killed by a drunken Bolivian sergeant, Grove Press has finally brought out the legendary journal he kept during the time he spent with Congolese rebels in 1965. Grove knows how to play to the fantasies of baby boomers who remember when they fit trimly into their Che T-shirts. The »

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Tolerating Freedom

Is a cancer growing in the bowels of liberalism?

Loren E. Lomasky

The Long Truce: How Toleration Made the World Safe for Power and Profit, by A.J. Conyers, Dallas: Spence Publishing, 266 pages, $27.95

Two Faces of Liberalism, by John Gray, New York: The New Press, 161 pages, $25

How should human societies be ordered? The question has called forth diverse answers. Some governments take their primary task to be ensuring that people do the bidding of the gods, and so they establish a coterie of priests or prophets or mullahs to ascertain and enforce divine will. Ancient Egypt and Japan went that one better by finding a man-god to give the orders. Other states seek more worldly outcomes. Rome intricately structured its republic to maintain a balance between patricians and plebeians; Tito's Yugoslavia sought to preserve one between Serbs and Croats.

The Soviet Union claimed to seek a dictatorship of the proletariat, while virtually every contemporary African country is a straightforward dictatorship of the dictator. Imperialist nations strive to put a finger into every available international pot; Switzerland has managed for centuries to remain uninvolved in external entanglements. China built a great wall to keep outsiders out, East Germany one to keep insiders in. And most every other fancy of ambitious, powerful men has found expression in some political form or another.

Only recently in human history, however—during the last four centuries at most—has any currency been given to the conception of a political order dedicated to the proposition that individuals are to be left alone, by each other and, especially, by their governors. The earliest theorists of this new idea declared that all human beings have rights that delimit a zone in which they are morally entitled to set their own course, subject only to avoiding trespass on the protected zones of others. John Locke characterized the perimeter of this zone as rights to life, liberty, and property; Thomas Jefferson revised the canonical list to include pursuit of happiness. They are among the founding spirits of the revolutionary politics that eventually came to be known as liberalism.

More important than the subtle details distinguishing these various liberal philosophies is the broad area within which they achieve consensus. Against the entire tide of prior human experience, they audaciously insist that the state is properly the servant of the people, not vice versa. Government's role is not to pursue some grand national ideal but rather to protect citizens from aggressors internal and external so that people will be free to devote themselves to ends of their own.

It is easy to underestimate just how significant a break from all previous political practice early liberalism represented. Virtually every established interest found it threatening. Kings could not abide the suggestion that they were to be public servants rather than divinely appointed masters; aristocrats despised liberalism's leveling tendencies; clerics saw it as an invitation to heresy or irreligion; moralists perceived that individuals set free to develop their own conceptions of the good might give themselves over to every species of license. The first generation of liberalism's opponents, then, condemned generalized liberty as an invitation to wickedness. Today that sort of criticism is rarely voiced by parties this side of the Taliban (although one may suspect that it is written in the hearts of any number of conservatives, ecofeminists, and doyens of political correctness). Contemporary opponents of liberalism prefer indirect lines of

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attack. The most prominent approach is to find within liberal philosophies not sinfulness but contradiction. The progenitor of this strategy was Karl Marx.

Early socialists excoriated liberalism's market economy as greedy, unjust, altogether lacking in compassion. Marx pointedly rejected these excursions into "bourgeois morality" and in his best sneering style labeled its purveyors "utopian." To flail away at well-entrenched institutions with weapons fashioned from homilies and sentimental broadsides is, Marx maintained, quixotic. Rather, if liberal society and, especially, its economic foundation (which he dubbed "capitalism") were to be supplanted, it would be by identifying structural flaws that render it unsustainable.

In some of the most turgid but nonetheless influential prose of the 19th century, Marx professed to exhibit the contradictions of an economic system that is sustained by extracting ever-increasing quantities of surplus value from workers but can do so only by progressively impoverishing them such that they are unable to afford the dazzling wares spewed out by the capitalist engine. In the fullness of time these workers would rise up and expropriate the expropriators. For Marx, liberal society wasn't simply immoral; it was irrational.

Marx's analysis had the great virtues of rigor, elegance, and explanatory richness. The only problem was that it was falsified by experience. As late as the 1950s many took Nikita Khrushchev seriously when he banged his shoe on the table and declared, "We will bury you!" Today it is Khrushchev who is buried, under earth that was formerly but is no longer the Soviet Union. In the meantime, liberal capitalist societies have obdurately refused to implode but instead churn out for their increasingly wealthy citizens an abundance of goods and opportunities. Today the Marxist critique is essentially dead everywhere except Cuba, North Korea, and the humanities departments of American universities.

The authors of these two books are not Marxists, but like Marx each claims to have discerned a cancer growing in the bowels of liberalism. Although A.J. Conyers and John Gray spring from very different locations on the political spectrum, each is convinced that liberalism's ideal of toleration is fatally compromised. This is no trivial complaint. Central to the program of liberalism is the requirement that people are to be let alone to act as they see fit provided only that they not infringe the rights of others.

To be sure, this policy is often belied in practice. Even in mostly liberal societies such as that of the United States, a sticky web of paternalistic laws coerces individuals for what is alleged to be their own good, and ill-defined conceptions of "social justice" are invoked to justify a panoply of redistributive programs, sometimes from rich to poor, sometimes from poor to rich, always at the expense of personal liberty. For committed liberals, toleration remains as much aspiration as accomplishment, but it is an aspiration that cannot be abandoned without committing philosophical suicide.

In *The Long Truce*, Conyers, professor at the George W. Truett Theological Seminary at Baylor University, argues that the creed of toleration is at war with itself. The modern nation-state has succeeded in rendering individuals spectacularly free to act as they see fit, especially with regard to making and spending money. If one looks only at the bottom line, all appears well. The picture is more complicated, however. While individuals have been empowered by the modern state, intermediate associations such as churches, families, and guilds that previously stood between them and the omnipotent state have been divested of authority. Because the state reserves to itself exclusive entitlement to command obedience, it shows itself intoler-

cover of *The African Dream* includes a glam photograph of Guevara, cigar cocked, eyes slyly assessing the potential for victory. "This fascinating secret history at last illuminates the missing chapter of a revolutionary icon," promises a blurb from the *Sunday Times* of London.

As radical icons go, Guevara surely takes the beauty prize, with eyes that are sometimes dashingly romantic, sometimes starkly idealistic, but always captivating. The ever-present cigar and trademark commando beret complete the image, the ultimate in revolutionary chic. As evidenced by everything from Mike Tyson's torso to the placards waved by World Treaty Organization protesters in Seattle and beyond, Guevara's stock has hardly slipped in the years since his death.

But can his reputation survive the publication of his own words?

Back in the early '70s, while I was European acquisitions editor for Ballantine Books, I tried to get the U.S. rights to the Congo diaries, then one of publishing's holy grails. I managed to get a meeting with Régis Debray, the famous French celebrator of the Castro regime and one of the few people at the time who had some notion of their content. Debray had spent four years in a Bolivian slammer for having visited Guevara in the South American back country.

Debray's thinking about Castro and Cuba would undergo »

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ant toward all institutions other than itself. The superficial wealth of liberal society thus disguises an underlying spiritual poverty.

Conyers' indictment strains credulity, especially when lodged against the United States. Look around, and as far as the eye can see are intermediate associations jostling up against each other. We are a land of churches—and synagogues, mosques, Hindu temples, New Age retreats. We are members of labor unions, professional associations, hobbyist clubs, social fraternities, ethnic associations. Charitable organizations raise money to heal the sick, save the whales, convert the heathen. Many of these groups are evanescent, while others persist over decades and centuries. Some wax while others wane. How can it be denied that liberal toleration extends to associations as well as solitary individuals?

Conyers does deny it, but only by putting a peculiar twist on the concept of toleration. To be sure, he admits, individuals may sign up as they wish, but they also enjoy carte blanche to withdraw. That's the rub. Should you choose to leave the church, it has no recourse. It cannot compel you to remain in the congregation, forbid you from joining a competing sect, or punish you for your waywardness. The state jealously denies it a power to discipline. Conyers is not in every respect a reactionary, but he writes affectionately of a medieval world in which associations wielded both carrots and sticks. That, he maintains, was true toleration.

Should liberalism plead guilty to this charge? I believe it must. But rather than amounting to a confession of inconsistency, it is a badge of pride. No imaginable social order can square the circle. If I wish to be associated with someone who does not desire my company, then necessarily one of us will be disappointed. The way in which liberalism resolves such impasses is via the principle of mutual consent. One's freedom does not include a power to conscript others in one's design.

This holds true both for individual actors and for groups. It is a corollary of the requirement that exercises of liberty are permissible only up to the point at which they infringe the rights of others. Conyers is therefore mistaken in suggesting that liberalism is somehow friendly to individuals and to the state but hostile to intermediate associations.

Nor is it clear that Conyers is the sort of ally that associations want or need. In many states labor unions can compel membership but churches cannot. Does that imperil the latter's legitimacy? Just the opposite. Authority is, among other things, moral authority, and it is forfeited when affiliation is enforced at the business end of a cudgel. Nor is the prospect of numerous intermediate associations wielding coercive power attractive. The cover illustration of *The Long Truce* is Robert-Fleury's painting *St. Bartholomew's Day Massacre*. It depicts members of the French Catholic subcommunity lustily impaling on their swords members of the Protestant subcommunity. Does Conyers really take the persecution of the Huguenots to be an endearing slice of life from the Good Old Days? One fears that he might.

John Gray, professor of European thought at the London School of Economics, is among the most articulate of contemporary political theorists. He is also one of the most perplexing. Gray has gone through more transmutations than the cast of *Saturday Night Live*. His earliest and best work was done as a liberal in the classical tradition. Even then, however, his propensity to oscillate among poles of influence was pronounced. John Stuart Mill was Gray's first liberal mentor but was then rejected in favor of F.A. Hayek, who was in turn displaced by Isaiah Berlin and then by Michael Oakeshott.

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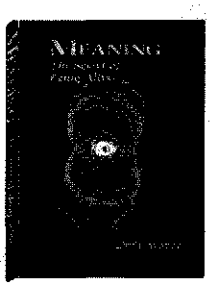

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None could retain Gray's favor for long; each was held to be deficient for failing to supply unimpeachable liberal foundations. Eventually these turnings thrust Gray entirely beyond the orbit of liberalism. He announced himself to be a "post-liberal," a pluralist, a devotee of Gaia, environmentalism's Earth personification. This leading British Tory Party public intellectual moved house to Tony Blair's New Labour just in time to bask in its coming to power. In a prolific string of books and op-ed pieces, he now regularly bashes globalization, especially

Does the superficial wealth of liberal society disguise an underlying spiritual poverty?

America's malign influence thereon. In *Two Faces of Liberalism*, he returns to his favorite theme, liberal incoherence.

Liberalism, claims Gray, wants to have it both ways. On the one hand, it professes a doctrine of toleration, a willingness to allow a thousand flowers to bloom. On the other hand, it presents itself as the uniquely justifiable regime. All alternative forms of political order pale by comparison. Liberalism is, therefore, utopian; it tolerates no regime but itself.

The primary witness Gray subpoenas to validate the indictment is John Stuart Mill, who in his classic essay *Utilitarianism* introduces a distinction between higher and lower pleasures. Mill's predecessor, Jeremy Bentham, had famously declared one mode of life to be as good as any other that affords a similar quantity of pleasure. The childish game of pushpin, said Bentham, is as good as poetry. But Mill rejected this valuational leveling, insisting that pleasures differ in quality as well as quantity: Activities that engage individuals' higher faculties are infinitely preferable to mere bodily enjoyments.

According to Gray, this is not simply a harmless instance of Victorian snobbery; it is emblematic of liberalism's lack of hospitality to conceptions of the good that fall short of its own august standards. The case he musters in support of this accusation is underwhelming. It is true that liberal theorists hold a free society to be the best form of political organization, but this kind of judgment is hardly unique to liberalism. To advocate a theory is to hold it preferable to its competitors. The contrary isn't toleration; it is hypocrisy.

In any case, liberals historically have been remarkably open to diverse forms of institutional design. Shall the polity be parliamentary or presidential, bicameral or unicameral, federal or unitary, a republic or a constitutional monarchy? Each of these and innumerable similar questions might have a best answer in any particular society, but no prominent liberal theorist has ever declared that one size must fit all.

Moreover, liberals readily concede that liberal institutions cannot be successfully imposed on just any preexisting social stratum. The tree of liberty bears beautiful flowers, but its roots are delicate; they will grow only in suitable ground. Of all the great classical liberal spokesmen, none was more explicit on this theme than Mill himself. So liberals not only are hospitable to a multitude of liberal democratic forms but also willingly accord legitimacy to second-best regime types. If this is a species of "utopianism," it is unlike any other.

That Gray should choose to embark on an excursion into Mill's doctrine of higher/lower pleasures is bizarre. He knows full well that it was not intended as a pretext for sending pleasure police into people's houses to confiscate pushpin sets and replace them with bound volumes of Keats and Shelley. Mill was in part trying to address a problem in the philosophical

» Che's Secret Diary

a major shift in the decades ahead. But when he and I met, he still claimed to be on the best of terms with Castro. He acknowledged the Congo diaries would certainly make for some very interesting reading, but, shaking his head sadly, said, "The Cubans will never let them out. They'll keep them in their archives forever." Debray was convinced that the diaries revealed too openly the great difficulty in fomenting insurrection among native populations, a grim reality which Che's Bolivian diaries also underscored.

Reading *The African Dream*, it's easy to understand Debray's conviction. Guevara casts serious doubts on the possibility of anything like world revolution. Everything went wrong, and the racial politics were hardly progressive. The Congolese had decided that Guevara should not be viewed as the leader of the Cuban-Congolese forces, but rather as a Cuban "councilor," so it would not appear that a white man was giving them orders. After discovering that so many of the African fighters were incompetent, Guevara took charge anyway, breeding bad blood. He had ongoing problems, too, with his black Cubans acting superior to and contemptuous of the native Congolese.

As for igniting revolutionary fervor among people he believed would lie—and lie preposterously—at the least provocation, Guevara found it just impossible. The beloved revolutionary icon sounds pretty much like an old-fashioned »

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theory of hedonism, its alleged inability to assign appropriate value to low-intensity but high-quality experiences.

Simultaneously he was endeavoring to combat aristocratic views that ordinary people need not receive an education in the fine arts and humane disciplines because they are capable of only the most basic enjoyments. Rather than exemplifying intolerance, Mill's higher/lower distinction bespeaks a desire to expand opportunities and secure greater social openness.

Utilitarianism is primarily a discussion of individual ethics, while *On Liberty* is Mill's most comprehensive and eloquent political manifesto. Gray pointedly declines to delve into this essay, for to do so would rip his thesis to threads. *On Liberty* explicitly insists that the state keep its hands off even low and self-destructive ways of life, provided only that the practitioners are not imposing them on unwilling others. Mill gives the example of polygamy in Utah, affirming both that it is a debased form of association and that it is nonetheless within the protected zone of self-regarding conduct. He could not be any clearer in expressing a commitment to tolerate all nonaggressive pleasures, both the higher and the lower.

Even when Gray has driven down dead ends in the past, he has typically made the trip provocative and rewarding. That is not true of the current excursion. *Two Faces of Liberalism* gives the appearance of being hastily tossed together and indifferently edited. Substantial passages are repeated almost verbatim one page apart; necessary distinctions are omitted or deliberately elided, characterizations of the views of other thinkers are sloppy and tendentious.

Nor is it clear who might be the intended audience for this volume. Gray drags into his discussion too many unexplained allusions to arcane theorists for a general readership to follow; if you happen not to know why Joseph de Maistre is important to the history of political discourse, you will be offered no hint here.

Yet because Gray for the most part supports his oracular characterizations of other thinkers by citing only his own previous writings, scholarly peers will see the book as failing to meet minimal professional standards. *Two Faces of Liberalism* is not a work of scholarship but a polemical tract. That is not its problem. Rather, the problem is that the polemics are embarrassingly clumsy.

Conyer's *The Long Truce* is, perhaps, worth reading for the various historical tidbits it presents lucidly and gracefully, and some will wish to peruse *Two Faces of Liberalism* to view the latest transmogrification of a once-gifted once-liberal thinker. Neither book even comes close to exhibiting a deep flaw in the doctrine of liberal toleration. They do demonstrate, however that the idea of a society structured on a principle of live and let live remains audacious enough to continue eliciting pained cries from those who are uncomfortable with individual liberty. ▪

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The Devil and Daniel Ellsberg

From archetype to anachronism.

Michael Young

Wild Man: The Life and Times of Daniel Ellsberg, by Tom Wells, New York: Palgrave, 692 pages, $32.50

In 1973, as his world began falling apart, Richard Nixon demonstrated his rhetorical prowess to his press secretary, Ron Ziegler. The topic was a break-in at the office of Lewis Fielding, Daniel Ellsberg's psychiatrist. Ellsberg was a former consultant at the RAND Corporation who had leaked the Pentagon Papers, a top-secret Defense Department history of the Vietnam War.

Nixon wanted dirt on Ellsberg, so his men dispatched a ham-fisted outfit to Los Angeles to see what Fielding had. When the White House came under suspicion, Nixon complained to Ziegler, "The president knows a hell of a lot of things, but does he know what the Christ some dumb assholes are going to do?...Goddamn to hell, I didn't tell them to go fuck up the goddamn Ellsberg place." As Tom Wells notes in *Wild Man: The Life and Times of Daniel Ellsberg*, the president not only knew about the Fielding break-in but was probably the one who ordered it in the first place.

It was arguably Ellsberg's greatest triumph: He had roused the self-destructive impulses of a president and an administration that he felt had betrayed the American people by allowing the war in Vietnam to continue. Some would nominate Ellsberg's role in exposing the Pentagon Papers as his finest moment, but despite the furor that their release provoked they largely disappeared into the sludge of post-Vietnam skepticism in the U.S. They were a valuable confirmation of the worst fears of those opposed to the war, but they were too bulky and intricate a collection of documents to affect most of the public. Indeed, the difficulty of Wells' book is that he describes a man and an event that, while interesting, have left virtually no enduring impact on American society.

What's more, he does so in a book that goes on forever. Wells strives to emulate the epic quality of other Vietnam-period biography-cum-*Zeitgeist*-accounts, such as Neil Sheehan's *A Bright Shining Lie* or David Halberstam's *The Best and the Brightest*, but Wells has neither author's talent, nor does he much care for the man at the center of his research. Besides, Ellsberg does not rate a 600-page book, particularly from an author who tends to confuse perspiration and inspiration: *Wild Man* is overloaded with other people's quotes, doggedly hunted down, so that one is never sure whether Wells' discomfort with Ellsberg springs from his own misgivings or from those of the myriad sources he cites.

There was a time when biography produced art, not phone books. Uncertainty was part of the bargain, so that the great biographers were—are—those tolerant of their subject's complexities and flaws. Wells is not, which leads him into a stifling form of deconstruction as he vainly hunts for clarity in Ellsberg through an unfiltered inventory of detail. To see how biography should be done, one might read René Grousset, the great French historian, whose description of Pompey in his *Figures de Proue* (1949) is both a tribute to brevity and a remarkably apt description of Daniel Ellsberg: "What was it his ambition to attain in the Republic? A sort of moral presidency to which, after the services he had rendered, he had some right? To rule, with or without a formal title? Especially to accumulate honors, many honors, which would have satisfied his vanity and his irresolution, but which his secret mediocrity would have prevented him from turning into something redoubtable?"

This is more or less the Ellsberg of *Wild Man*. Wells describes someone who is an egotist and a megalomaniac, with writer's block and a »

»» Che's Secret Diary

racist when it comes to evaluating his black brothers in arms.

And then there is the counterrevolutionary, existentialist angst: As Guevara and a small number of Cubans finally pulled out of the Congo, aware that their mission was a dismal failure, he noted, "During those last hours of our time in the Congo, I felt more alone than I had done even in Cuba or on any of my wanderings around the globe. I might say: 'Never have I found myself so alone again as I do today after all my travels.'"

Perhaps the most interesting question raised by the diaries is one of timing. Castro kept the diaries under lock and key for years. Why did he decide to release them now? Could it be that in his old age, he is getting envious of Guevara's lasting fame? Can the sight of those glorious Che posters appearing wherever in the world there is a demonstration be getting to the old dictator?

One might have supposed that Guevara's memory would be undermined by Cuban refugees such as Armando Valladares, whose terrifying prison memoir *Against All Hope* was also reissued last year by Encounter Books. Who would have ever guessed that Che's demythologizer might turn out to be his oldest ally? ■

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Everyone's a Critic

Don't shed any tears for cinephilia.

Jesse Walker

Didn't like *Braveheart*? You have a soulmate in cyberspace, and he posted his thoughts on a now-defunct interactive Web site. "I know it has won an oscar," he writes, "but I think it's too long and too bloody, I had to be covering my eyes every time. I also think that the guy (Brave Heart) shouldn't have been killed because what's the point of seeing a 3 hour movie full of blood that will end up with the main character dead."

Didn't like *Amelie*? You have a soulmate in Baltimore, and he writes for the local newspaper. On the eve of the Academy Awards, *The Sun*'s Michael Sragow noted that the popular French fantasy, up for five Oscars, was a "comedy about an introvert" that nonetheless used a "wildly extroverted plot and style." For that reason, he concluded, it was "100 percent inauthentic."

The first critic is inarticulate and ill-informed, but is expressing his honest reaction to a movie. The second critic—one of the foremost in the country—is articulate and well-read, but is offering a flowery non sequitor. He'd be better off muttering that he just doesn't care for this sort of picture.

Criticism is reputed to be dead, film criticism especially so. A few years ago, Susan Sontag complained that cinephilia—"not simply love of but a certain taste in films"—is dying, and with it the idea "that films are unique, unrepeatable, magic experiences." Other critics repeated the charge, each evincing nostalgia for the filmgoing culture of the early to mid-1960s, when reviews as well as movies could spark heated debates. Now Raymond Haberski gives us *It's Only a Movie!* (University Press of Kentucky), which traces the whole history of American film criticism but reserves its closest attention for the cinephile era, and especially for the debates between two prominent critics of the day, Andrew Sarris and Pauline Kael.

There is another way to look at the period in question: not as the last gasp of film appreciation, but as the turning point toward the way we watch film now. At the beginning of the century, as Haberski's history underscores, "photoplay" critics were overwhelmingly concerned with cinema's capacity to improve its audience—and, conversely, with the ways "coarse" movies might lead them astray. The most fervent film critics were, arguably, the censors. With the power to review and alter movies before they were even released, Motion Picture Code enforcer Joseph Breen had an influence that more than one critic today might envy. (For extra credit: Imagine how Hollywood might have evolved if Breen's post had been held by Rex Reed.)

The decay of film censorship in the '50s and '60s coincided with the decay of the formerly dominant style of criticism. The younger critics were idiosyncratic and proud of it, either rejecting outright the idea of objective criticism or making arguments so eccentric that no one could possibly take seriously their pose as system-builders. In *The Village Voice* and elsewhere, Sarris dressed up his highly personal approach to criticism with theory, adapting French auteurism to defend his fondness for studio pictures previously derided as trash. Kael hewed more closely to the ideal of definable aesthetic standards, yet distrusted the idea that movies were an art and hated any theory that threatened to stand between herself and the screen. She similarly despised the notion that movies should be judged by their ability to uplift their viewers, and she sometimes seemed to devote as many words to those viewers as she did to the films they were viewing.

Today, contra Sontag, cinephilia is scarcely dead. There are fewer film societies but more VCRs, fewer film debates that everyone follows but more film debates *in toto*. "By the early 1970s," Haberski writes, "debate over culture had shifted from what 'we' as a people want out of life to how we as millions of people live those lives." The consumption of movies has similarly grown more personalized. First video transformed the home into a repertory theater, and now DVDs have turned it into a school for film archeologists as well. The video-store culture that produced Quentin Tarantino has moved online, where one can find sites and e-mail lists devoted to everything from blaxploitation to Tarkovsky. The criticism there is as passionate, as raucous, and sometimes even as well-written and well-informed as Kael could be in her heyday.

There is also, of course, our anonymous review of *Braveheart*. Then again, it was traditional film criticism that gave us Sragow's description of *Amelie*. Choose your poison.

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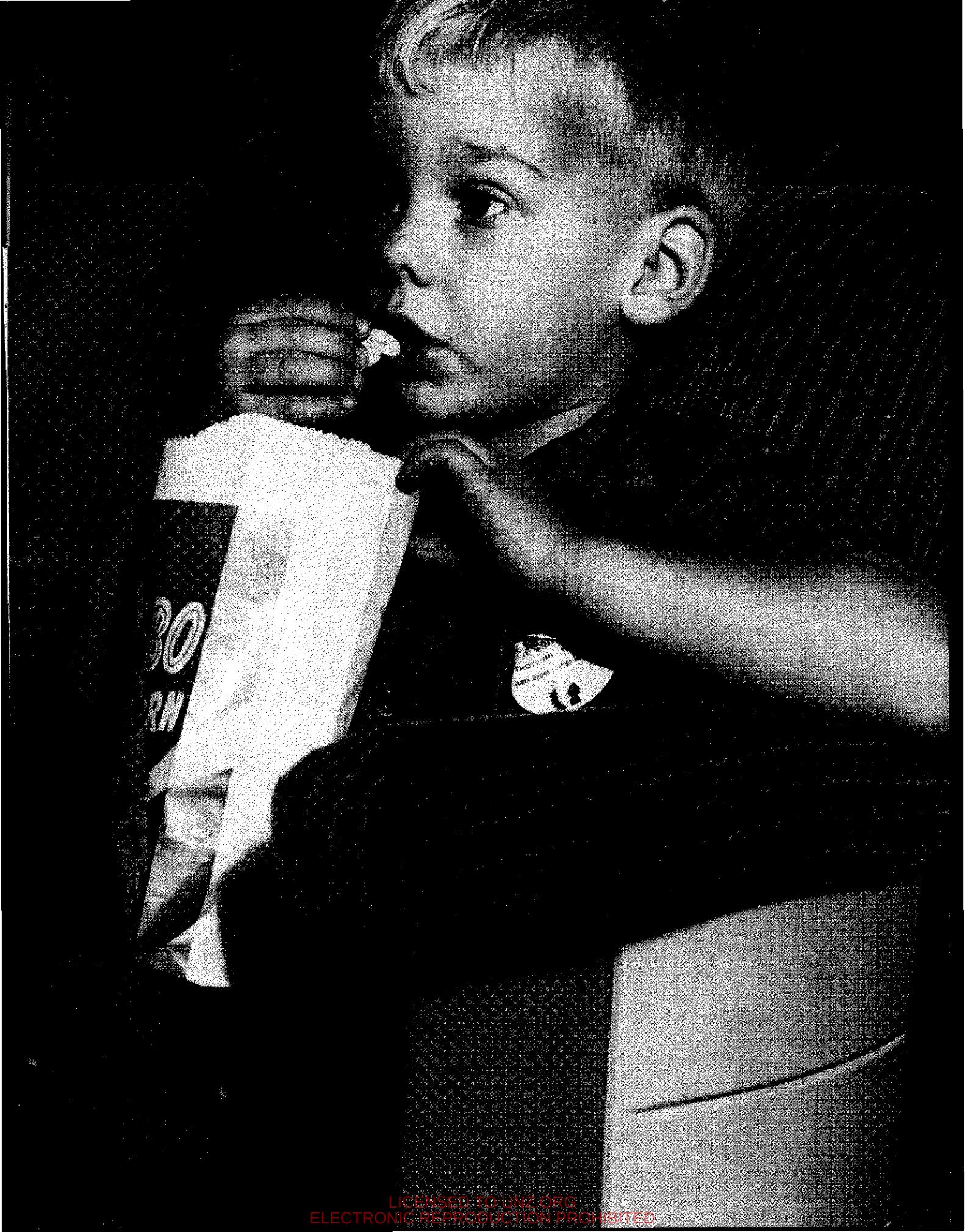

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taste for sex. But that description fits many people. What makes Ellsberg relevant is that he is an archetype of a particular era—the late 1960s—whose values have aged badly in America's collective memory. The motives that led to the release of the Pentagon Papers would be ridiculed in this post–September 11 climate, where compliant loyalty to the state is commonly regarded as an obligation.

Daniel Ellsberg was born in Chicago in 1931, to Jewish parents with a passion for Christian Science. The young Daniel was acknowledged as brilliant, a quality his mother, Adele, sought to exploit by channeling the boy into piano playing. Harry, the father, was an aloof engineer, disliked by Adele's family and apparently indifferent to the piano. Wells follows a hackneyed route in recording the psychological influences on Ellsberg: an ambitious mother who "was not, it seems, a nurturing sort," and a detached father who would interrupt this convenient Freudian tableau by having a car accident that killed Adele and their daughter. Afterward, the young Daniel, no longer manacled to the keyboard, would feel a sense of release. Though he plainly loved his mother, he later said that he never cried at her death.

Ellsberg's reserve showed, if nothing else, that he was policy analyst material. In 1958 he was invited to join the RAND Corporation, the private, nonprofit research institution in Southern California founded after World War II by the Air Force to advise the government on military issues. This came after a dazzling romp through Harvard, where Ellsberg was invited to join the university's select Society of Fellows. He later earned a doctorate on the subject of decision making under uncertainty, at a time when game theory was all the rage. Revealingly, Ellsberg had earlier enlisted in the Marine Corps, a move that would raise eyebrows from acquaintances in academe. He would describe himself as being "a liberal on domestic matters and, on foreign policy, a tough guy."

At RAND, Ellsberg tasted the malicious nectar of high secrecy. He rubbed elbows with the institution's nuclear strategy gurus—Herman Kahn, Albert Wohlstetter, Bernard Brodie—and gained access to confidential U.S. war plans in order to study nuclear command and control issues. Ellsberg found the plans dangerously rigid, though Wells goes to some length to prove that Ellsberg overstated his importance in formulating an alternative policy. Wells cannot abide Ellsberg's hyperbole, but throughout the Kennedy and Johnson years this self-promoter was involved in very important government projects, always propelled by friendly patrons and a reputation for being a genius. His Washington career began in 1964, when Ellsberg landed at Robert McNamara's Pentagon as special assistant to John McNaughton, the assistant secretary of defense for international security affairs. There he would start working on Vietnam.

Vietnam would come to inhabit Ellsberg, transforming him completely. Ellsberg left the Pentagon for Saigon to join a team led by Gen. Edward Lansdale, who had become a counterinsurgency sage after defeating the Huk rebellion in the Philippines in the 1950s. Ellsberg's exposure to the conflict—in particular, his forays into distant districts where few Americans traveled—convinced him that the U.S. pacification campaign was failing. It would take time for him to turn against the war—too much time, some argue—but at least he did so, in contrast to, say, his more experienced friend John Paul Vann, a former Army officer who acted as a U.S. adviser during the war and who until the very end believed the conflict to be winnable.

After returning to RAND, Ellsberg began copying the Pentagon Papers, hoping that their exposure of a decade of official dissembling on how the war in Vietnam was conducted would force the government to pull out of the conflict. As Wells persua-

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sively argues, Ellsberg's delay in leaking the papers was motivated by an enduring desire to be part of the Establishment. Harvard men such as McGeorge Bundy and Henry Kissinger pursued the kinds of careers that Ellsberg thought should be his by right, although they had a ruthless discipline he lacked. By the time the papers were published, Ellsberg had largely undermined his chances of becoming a senior policy official. The reason was that his recognized brilliance was overtaken by a reputation for being inefficient and unable to write—a fatal liability in a world where power is measured by one's aptitude to generate timely papers and memoranda.

Though Ellsberg copied and privately circulated the Pentagon Papers, his involvement in their publication by *The New York Times* in June 1971 was less simple than is often believed. He had initially tried to leak the papers through members of Congress, whose immunity would have allowed Ellsberg to protect himself legally, but he was rebuffed. He also allowed scholars at the Institute for Policy Studies (IPS) to copy part of his set. Finally, after much dithering, Ellsberg met with Neil Sheehan of the *Times*. After reneging on a publication agreement with Sheehan, he allowed him to see some of the documents but told him not to copy them. Sheehan ignored the request, combined his duplicates with those he had received from the IPS, and published them, giving the *Times* an exceptional scoop.

The Nixon administration took the matter personally. This may seem odd, since the papers described the duplicity of the previous Democratic administrations. But at the time, Nixon and Kissinger were attempting to secure an "honorable peace" to cover a U.S. withdrawal from Vietnam, which meant that the war had to drag on. The Pentagon Papers created an uncomfortable context for this strategy by highlighting the fact that the lies about Vietnam were continuing under the Republicans.

Small wonder, then, that Nixon personally targeted Ellsberg. The president's plan was to do to the leaker what he had done to Alger Hiss: to gather information that would sully him in the public eye.

Henry Kissinger was especially discomfited. In 1968 he had hired Ellsberg to help prepare National Security Study Memorandum 1, which outlined options for withdrawing from Vietnam. Kissinger's bureaucratic instincts told him he should be among the shrillest of Ellsberg's detractors. Soon he was spreading word that Ellsberg had shot at peasants from helicopters in Vietnam, a peculiar—and false—accusation from someone whose widening of the war led to the deaths of almost 1 million Cambodians and Laotians.

> The Ellsberg of *Wild Man* is an egotist and a megalomaniac, with writer's block and a taste for sex.

When that was not enough, Kissinger accused Ellsberg, again falsely, of being homosexual. One is reminded of the spiteful, throwaway remark Kissinger directed at Christopher Hitchens recently, when he accused the journalist of being a Holocaust denier, words he was subsequently made to eat.

The criminal charges against Ellsberg for releasing the Pentagon Papers were dismissed because of government tampering with the evidence against him, and his star began waning almost immediately afterward. Ellsberg tried to expand on the moral presidency he had been led to believe was his, but his secret mediocrity got the better of him. His historical purpose served, he became an afterthought. Though he continued to play a part on the '70s protest circuit, particularly against nuclear proliferation, by 1981, when a conservative Republican returned to the White House, Ellsberg had become a vague memory. Under Ronald Reagan, illegal concealment would again be fashionable, and there were no Ellsbergs to give the game away. Instead, the person best personifying the spirit of the day was Oliver North.

Yet it was not Reagan but Bill Clinton who would symbolically inter what Ellsberg (who still hits the lecture circuit) represented. The first baby boomer president had all the generational ambiguities that Ellsberg once had (though he was considerably younger), but he cast them aside for the sake of power. Clinton's jovial abandonment of principle, and America's willingness to play along, created a setting where someone like Ellsberg, though no moral paragon himself, appeared obsolete. The line of confrontation in the 1990s was no longer between a potentially corrupt state and a civil society defending its liberties. What Ellsberg lost in the process the republic did, too, and to its detriment. ▪

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Norrath Paribus

Jesse Walker

THE ROSTER OF nations is larger than you'd guess from the membership list at the U.N.: There are semi-sovereign statelets at sea, tongue-in-cheek micro-monarchies in the suburbs, even make-believe sultanates on the Web. According to a recent study by Edward Castronova, an economist at Cal State Fullerton, one such virtual polity now has an economy larger than India's or China's.

That nation, Norrath, is the setting for the online game EverQuest (www.everquest.station.sony.com); it contains hobbits, monsters, much sword-and-sorcery mayhem, and a bustling business in loot and magic spells. From that trade, Castronova reports, there have emerged labor markets, deflation, and an underground economy, in which players pay for products offline in U.S. currency.

Yes, Norrath is imaginary, but to its citizens it is real enough. It is through a similar shared-but-subjective process that the dollar becomes a valuable token instead of a pretty piece of paper, that a policeman becomes an authority figure instead of a man in a funny blue suit. There's much to be said for life outside cyberspace, but don't get too smug when you think of the Norrathians. Even here in the real world, virtuality is the norm.

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Wildlife, Too, under Siege in Zimbabwe

Terry L. Anderson is the Martin and Illie Anderson Senior Fellow at the Hoover Institution and the executive director of the Political Economy Research Center.

Recently elected Zimbabwean president Robert Mugabe has clearly indicated that he has no intention of respecting property rights or the rule of law. His "terror teens" have brutally killed innocent people, and his "land reform" plan demands that more than 20 million of the 23.5 million acres under private ownership be surrendered without compensation. He has sent his thugs into the hinterlands threatening farmers and pressing squatters to take over the land. Insecure property rights have left Zimbabwe's economy in shambles.

Mugabe's assault on private property has also taken a toll on wildlife, for without landowners there is no one to protect them from poachers. **Before Mugabe's attack on private property, Zimbabwe had demonstrated how wildlife could be privately protected.** The CAMPFIRE program, for example, championed by the World Wide Fund for Nature, allowed local communities to manage wildlife. Hence wildlife became an asset as villagers in communal areas profited from hunting and photo safaris. Elephant populations mushroomed and poaching plummeted.

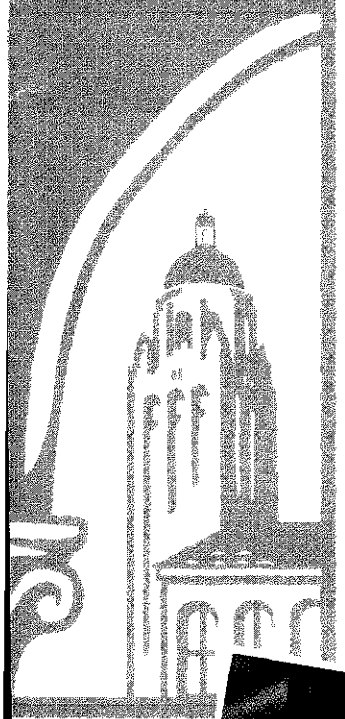
Stimulated by growing demands for hunting and tourism, private landowners also got into the wildlife business by combining small ranches into single units called *conservancies*, encompassing thousands of acres. The Save Valley Conservancy, for example, put together over 850,000 acres for wildlife management and reintroduced rare species such as black rhinoceros and roan antelope. Throughout Zimbabwe, 64 percent of kudu, 63 percent of giraffes, 56 percent of cheetahs, and 53 percent of sable antelope and impalas were on private ranch properties.

Unfortunately wildlife is under siege by Mugabe. Photos of mutilated animals in the February 2002 issue of *African Geographic* paint a sickening picture, and the statistics tell the rest of the story. To clear the land, squatters have burned more than 60 percent of the woodland on the country's three largest wildlife conservancies. The Bubiana Conservancy reports that 20,000 trees have been felled, 22 buildings razed, staff assaulted, and perhaps 50 percent of the wildlife killed. The Save Valley Conservancy reported more than 200 cases of poaching since August 2001 and the discovery of 5,677 snares. On the Chirendzi River Conservancy, where US$300,000 had been invested in improving wildlife habitat, 40 rare sable antelope and 200 large eland have been killed.

Poachers have also devastated smaller game ranches. Twenty-seven ranches in one region reported 2,761 animals killed and 26,292 snares collected. The value of animals lost is estimated at US$1.5 million. This value does not reflect the jobs—for whites and blacks alike—that will be lost as a result of the decline in wildlife populations.

The poor citizens of Zimbabwe cannot be blamed for trying to get their share of the land grab. **Mugabe has duped them into thinking that land redistribution without compensation or due process is the key to economic prosperity.** In fact, sustainable development will come only from stable property rights. Zimbabwe had previously shown the world how to balance economic development with conservation through private and communal ownership. Unless the sanctity of private property can be reestablished in Zimbabwe, its people and its wildlife will continue to suffer.

— Terry L. Anderson



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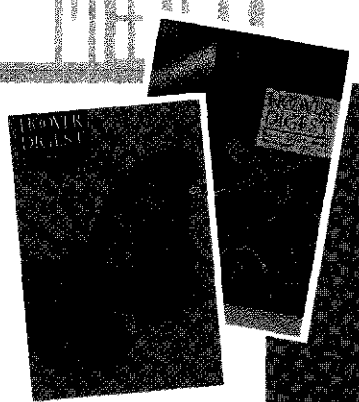

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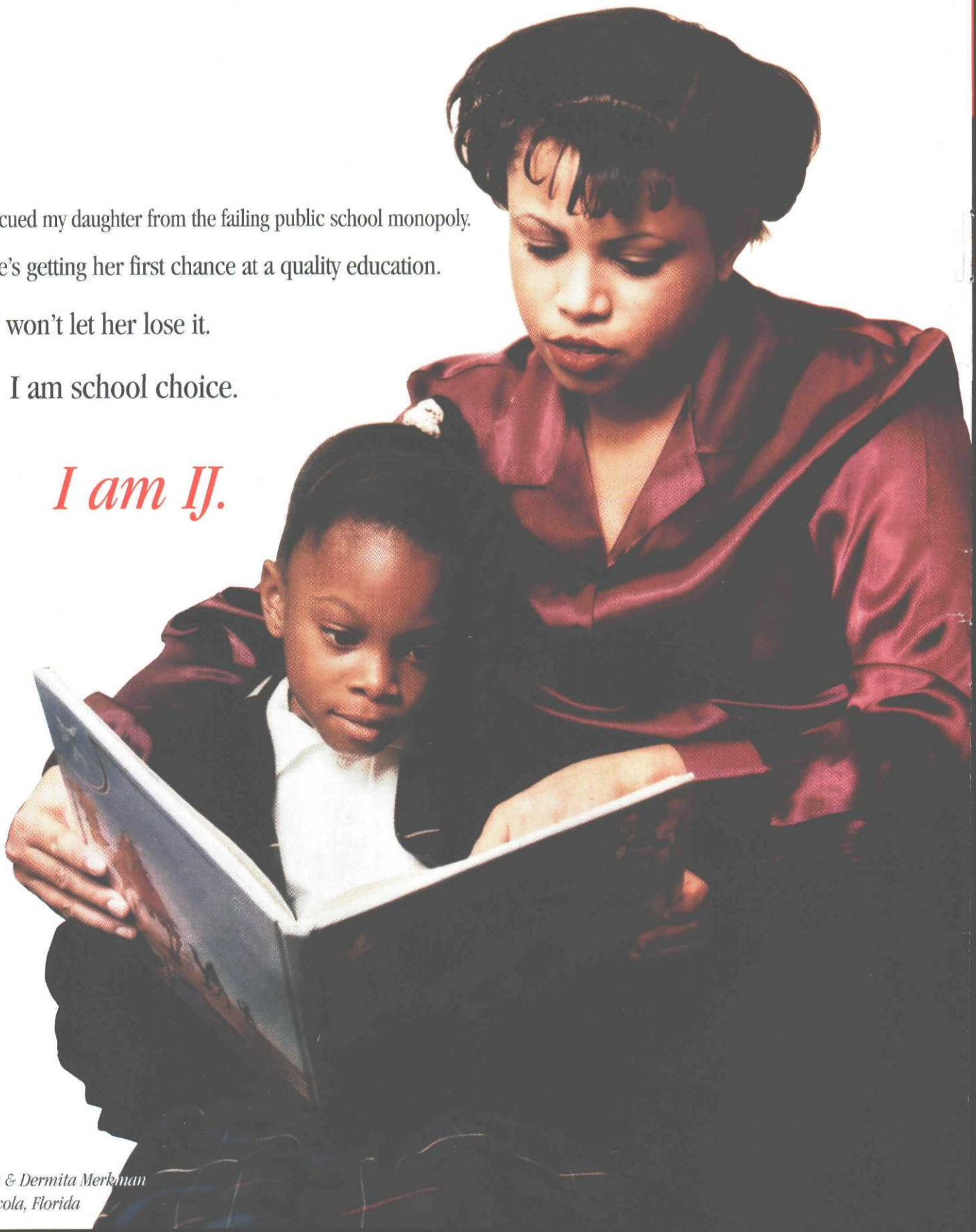

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